The Planning Act

A Working Paper in Legislative Form

Province of Nova Scotia
Department of Municipal Affairs
November 1982

-F O R E W O R D-

In November 1981 Nova Scotia's Planning Act Review Committee (PARC) put forward its Final Report and Recommendations. Over the past months the Department has continued to seek and receive comment on the PARC proposals, particularly from other departments of Government through the Deputy Ministers' Committee on Land Use Policy. In general, an expression of support for the overall thrust of PARC's recommendations has been received. But there has also been indicated a substantial preference to reserve detailed comment until the Final Report's proposals could be studied in a form more closely resembling draft planning legislation. I am therefore pleased to present this Working Paper in Legislative Form.

The endeavour to render PARC's many recommendations into a format more closely resembling legislation has been a valuable, but complex responsibility: a process not without its inherent difficulties. While the Department has conscientiously endeavoured to remain true to the philosophical underpinning of PARC's recommendations, those familiar with the Final Report will realize that the Working Paper inevitably includes certain adjustments to the PARC proposals. In some cases these adjustments result from a desire to achieve a reasonable balance between the intent of a recommendation and the need to establish a legislative framework which is legally interpretable and administratively straightforward. In other cases adjustments result from lengthy discussions within the Department, discussions which invariably took into account PARC's recommendations and comments and suggestions received from other interested parties. In such cases an explanation of the rationale for adjustments to PARC's recommendations is included in the annotations which accompany the Working Paper.

The Working Paper in Legislative Form is nothing more nor less than its title implies. While it is hoped that a reasonably complete document with a mininum of internal inconsistencies, has been prepared, it should not be viewed as the definitive work with regard to what a new Planning Act for Nova Scotia should or may look like. The Working Paper is, in many respects, "a trial balloon" and as such, it has been expressly prepared for the purpose of stimulating discussion, and eliciting comment and suggestions.

Copies of the Working Paper will be provided to departments of Government, the municipalities and the Union of Nova Scotia Municipalities, to planners and to the interested public for consideration and comment prior to the preparation of draft legislation for introduction to the Provincial Legislature. However, time is of the essence.If legislation is to be prepared early in the new year submissions in response to the Working Paper will have to be received not later than December 31, 1982.

In closing I want to thank the many staff members who have so willingly contributed to the preparation of the Working Paper. I want, as well, to extend thanks in advance, to all who will continue to take the time to contribute to the ongoing work towards a new Planning Act.

Ron Simpson
Director of Community Planning

November 1982

ORGANIZATION OF THE WORKING PAPER

The text of the Working Paper consists of material in legislative form and explanatory notes. The right facing pages of the document contain the material in legislative form. Where this material differs significantly from the current Planning Act or from the intent of the Final Report of the Planning Act Review Committee, or where some clarification was deemed necessary, explanatory material has been placed on the left facing page under the heading "Annotation and Discussion". To the extent possible, the "Annotation and Discussion" text is located immediately to the left of the material in legislative form to which it refers.

Since reference is made to both the current Planning Act and the Final Report of the Planning Act Review Committee, copies of them may be helpful in reviewing this Working Paper.

ANNOTATION AND DISCUSSION - STATEMENT OF PURPOSE

The Planning Act Review Committee recommends that a Statement of Purpose be included with a new Act. The Department agrees. This section sets out the respective roles of the Province and the municipalities in planning matters and provides a concise statement of what the proposals which follow seek to accomplish.

Be it enacted by the Governor and Assembly as follows:

1 This Act may be cited as the Planning Act. **Short Title**

2 The purpose of this Act is to **Purpose**

(a) to enable the Governor in Council to identify and protect the Province's interests in the use, development and subdivision of land, through the adoption and administration of provincial land use policies and regulations and provincial subdivision regulations;

(b) to enable municipalities to assume the primary authority for planning within their respective jurisdictions, through the adoption and administration of municipal planning strategies, land use by-laws and subdivision by-laws, consistent with the policies and regulations adopted by the governor in Council pursuant to this Act;

(c) to establish a consultative process which will ensure the right of the public to have access to information and participate in the formulation of policies and regulations, including the right to be notified and heard before decisions are made under this Act; and

(d) to provide for the fair and efficient administration of regulations and by-laws pursuant to this Act to ensure that the rights of individuals are not ifringed upon except to the extent that is necessary for the greater public interest.

3 In this Act, unless the context otherwise requires, **Definitions**

(a) "Board" means the Nova Scotia Municipal Board;

(b) "clerk" means the clerk of a municipality;

(c) "commission" means a district planning commission;

(d) "council" means the council of a municipality;

Sections 1, 2, 3

ANNOTATION AND DISCUSSION

(e) "Department" means the Department of Municipal Affairs;

(f) "development" includes any erection, addition, replacement or relocation of or to any building or structure and any change or alteration in the use made of land, buildings or structures, and any alteration in the established grade of land;

(g) "Director" means the Director of Planning appointed under this Act;

(h) "former Planning Act" means Chapter 16 of the Acts of 1969, as amended;

(i) "former Town Planning Act" means any former Town Planning Act;

(j) "Minister" means the Minister of Municipal Affairs;

(k) "municipality" means a city, town or rural municipality;

(l) "non-conforming building" means a building that is lawfully in existence or lawfully under construction on the date that a land use by-law or amendment affecting the building or the land on which the building is situate comes into effect and that does not or will not when construction is completed, conform to the by-law;

(m) "non-conforming use" means a lawful use of a building or land being made at the date that a land use by-law or an amendment affecting the use comes into effect that does not or will not when construction is completed, conform to the by-law;

(n) "rural municipality" means a municipality of a county or a district;

(o) "subdivision" means the division of any area of land into two or more parcels, and includes a resubdivision or a consolidation of two or more parcels, whether or not those parcels were previously subdivided pursuant to this Act.

ANNOTATION AND DISCUSSION - ADMINISTRATION

Section 6: *This section expands the cost-sharing provisions of the current Planning Act to include administrative expenses incurred by municipal units.*

ADMINISTRATION

Minister to have Supervision

4 The Minister has the general management and the supervision of this Act, and the provincial land use regulations and subdivision regulations.

Director of Planning

5 (1) The Minister shall appoint from the public service an officer in the Department to be known as the Director of Planning who shall be responsible for those duties imposed by this Act and who shall perform any other duties assigned to him by the Minister.

(2) The Minister may from time to time authorize any other person on the staff of the Department to act in the Director's stead.

Cost-sharing

6 The Minister shall pay one-half of the cost of the preparation and adminstration of municipal planning strategies, inter-municipal planning strategies, land use by-laws and subdivision by-laws.

ANNOTATION AND DISCUSSION - PROVINCIAL PLANNING

Those familiar with the Planning Act Review Committee Report will see that there has been substantial acceptance of the changes recommended by the Committee. However, there are some departures from the Recommendations, in that the Department of Municipal Affairs is recommending that the establishment of an inter-departmental committee to advise the Executive Council in the formulation of provincial land use policy be enabled in the legislation. This is a compromise between the PARC recommendation that a committee be established in the Act and a response which suggested no reference to a committee in the legislation. In a similar manner the adoption of provincial land use policies is enabled rather than being required.

The Department agrees with the PARC final report that province-wide regional planning has not been demonstrated to be effective and should not be maintained in that form in new legislation. However, it is proposed to retain the Halifax-Dartmouth Regional Development Plan and amendments thereto through proposed transitional provisions.

This part of the Working Paper sets out a new less complicated approach to protect provincial interests in the use of land and to provide some basic information for municipal planning. Under this scheme the Province could adopt individual policies. Some subjects might be protection of public water supplies, designation of provincial parks, or reservation of an energy transmission corridor. Municipalities would be consulted prior to the implementation of each policy and municipal planning would be required to be consistent with them. Provincial policies are enabled for a wide range of topics. This would allow the Province, if necessary, to prepare a comprehensive response to large scale development actitivy with major land use implications for a part of the Province.

Section 7: *This section enables the Governor in Council to establish an inter-departmental advisory committee to assist in the formulation of provincial land use policies.*

Section 8: *This section enables the Governor in Council to adopt provincial land use policies, and provides for the topics on which the Province may adopt policies. It also provides that the policies can apply to part of the Province only.*

PROVINCIAL PLANNING

Inter-Departmental Committee

7 (1) The Governor in Council may establish an interdepartmental committee to advise and assist the Governor in Council in the development of provincial land use policies.

(2) The Governor in Council may appoint a chairman and vice-chairman of the interdepartmental committee.

Provincial Land Use Policies

8 (1) The Governor in Council may adopt provincial land use policies where, in his opinion, these policies are required to protect the land resources of the Province.

(2) Provincial land use policies shall consist of a statement of policy with respect to any of the following matters;

(a) the use and protection of the land resources of the Province, including:

(i) agricultural land;

(ii) forested areas;

(iii) lands on which mineral deposits are located;

(iv) sand, gravel and rock deposits;

(v) recreation areas;

(vi) crown land;

(vii) natural and wildlife areas;

(ix) coastal areas, including estuaries, beaches and salt marshes;

(x) land subject to flooding; and

(xi) land subject to erosion which may result in environmental degradation or hazards to development;

(b) the preservation, protection and enhancement of areas of land, buildings and structures by reason of their architectural, environmental or scenic significance;

ANNOTATION AND DISCUSSION

Section 9: *This section provides for the consultation procedure that must be undertaken prior to the adoption by the Executive Council of a provincial land use policy.*

(1) & (2) *The Minister of a Department which is proposing the adoption of a provincial land use policy is required to request the Minister of Municipal Affairs to notify the clerk of each affected municipality of the proposed policy. The municipalities will be invited to respond and comment upon the proposal within a period of not less than sixty days.*

(3) *It is intended that, simultaneously with the notification of municipal units, the Minister of Municipal Affairs would place an advertisement in a newspaper circulating in the area affected, which advises interested persons of where the proposed policy might be inspected, directs to whom the submissions are to be made and the date by which they must be made.*

(c) the protection of energy resources and related activities, including the location of supporting infrastructure and facilities;

(d) industrial, commercial, institutional, residential, educational, cultural, recreational and health facilities including priority areas for their location;

(e) the general location and development of major utility, communication and transportation systems;

(f) the economic context for land use planning and development;

(g) large scale developments;

(h) strategy for coordinating and staging of development and public expenditures;

(i) the subdivision and development of land;

(j) any other matter that affects that land resources of the Province.

(2) A provincial land use policy may apply to all or part of the Province and there may be different policies for different parts of the Province.

Procedure for Adoption

9 (1) When a Minister of a Department of the Province is proposing the adoption of a provincial land use policy, he shall request the Minister to, and he shall, give written notice of the proposed provincial land use policy to the clerk of each municipality affected by the proposed policy.

(2) A notice pursuant to subsection (1) shall indicate the period of time in which the council is to reply to the Minister or the person designated to receive submissions concerning the proposed policy, which shall not be less than sixty days.

(3) In addition to the requirements of subsections (1) and (2), the Minister shall place an advertisement in a newspaper circulating in the area affected by the proposed provincial land use policy, which states where the proposed policy may be in-

ANNOTATION AND DISCUSSION

Section 10: *This section gives the Province some regulation-making authority where this is considered necessary to implement a provincial land use policy. The Department is recommending that, where possible, any municipal planning strategy or land use by-law which is in effect be consistent with provincial land use policies and carry out their intent. However, where these other mechanisms are not available, then the provincial land use regulations are to be operative.*

The same procedures for public information and comment required to adopt provincial land use policies apply to the adoption of provincial land use regulations.

Section 11: *This section provides for the Governor-in-Council to make provincial land use regulations which will be administered through a provincial development permit but only in areas where there is no municipal planning strategy and land use by-law. The regulations may be broad or limited in the geographic areas to which they apply. They may also be limited to only specific types of development or may apply to all development. Where provincial development permits are required a provincial development officer will administer the regulations.*

The provincial development officer is required upon request, to provide to an applicant with written reasons for the decision to grant or refuse a permit.

spected by interested persons, to whom submissions may be made concerning the proposed policy, and the date by which the submissions must be received, which shall not be less than sixty days following the publication of the advertisement.

(4) If so requested by the Minister, a municipality shall permit interested persons to examine proposed provincial land use policies at its offices, or in another location mutually agreeable to the municipality and the Minister.

Provincial Land Use Regulations

10 (1) Subject to Sections 11 and 12, the Governor in Council may make such provincial land use regulations as may be necessary to implement the provincial land use policies.

(2) A provincial land use regulation may apply to all or part of the Province and there may be different regulations for different parts of the Province.

(3) Provincial land use regulations shall not be prescribed until there has been notification and opportunity to make submissions concerning the proposed regulations, in accordance with Section 9.

(4) Where the Governor in Council deems it to be expedient, the Minister may circulate and advertise the proposed provincial land use policy and provincial regulations simultaneously.

Provincial Development Permits

11 (1) The Governor in Council may make such provincial land use regulations as are necessary to implement the provincial land use policies.

(2) A provincial land use regulation may apply to all or part of the Province and there may be different regulations for different parts of the Province.

(3) Where there is no municipal planning strategy or land use by-law in effect pursuant to this Act, the provincial land use regulations may require that a provincial development permit be obtained prior to undertaking a development or a specific development.

(4) Where a provincial development permit is required pursuant to this Section, a provincial development officer shall be appointed to administer the regulations and issue provincial development permits.

Sections 9, 10, 11

ANNOTATION AND DISCUSSION

(9) *A provincial development permit may be issued with conditions where the development officer decides these are necessary to meet the intent of the land use regulations.*

(10) *The Director shall receive a copy of all development permits.*

Section 12: *This section is intended to provide a procedure for the resolution of conflicts between provincial land use policies and municipal planning*

(1) *strategies. Since the provincial land use policies are to be paramount there must be a procedure to have municipal planning strategies conform to them. The following procedure is proposed:*

(2) *Where the conflict is between an existing planning strategy and land use by-law and a provincial land use policy and the Minister is of the opinion that the conflicts must be resolved before the five-year review of the municipal planning strategy is to occur, then he must notify the council of the particulars of the conflict and allow the council ninety days to suggest a method of resolving the conflict.*

(3) *If this period does not produce a resolution of the conflict, either by having the council fail to respond or by lack of an agreement between the council and the Minister, then the Minister may direct the council to amend its strategy and by-law to conform with the provincial land use policy.*

(5) Subject to this Act, a provincial development permit shall be issued by the development officer upon application.

(6) A decision of a development office whether or not to issue a development permit shall be in writing upon request by the applicant.

(7) A written decision of a development officer refusing to issue a development permit shall contain reasons for the decision.

(8) A development permit shall be in the form prescribed by the provincial land use regulations.

(9) A provincial development permit may be issued subject to such conditions to ensure conformity with provincial land use regulations as may be determined by the development officer, but no permit shall be refused by reason only that it conflicts with a provincial land use policy.

(10) A provincial development officer shall file with the Director a copy of each provincial development permit issued by him, and copies of reasons for refusals, within five days of issuing the permit.

Municipal Planning Strategies To Conform

12 (1) Where the Governor in Council has adopted a provincial land use policy or provincial land use regulations, and where, in the opinion of the Minister, an existing municipal planning strategy and land use by-law does not carry out the intent of the policy or regulations, the Minister may provide for the amendment of a municipal planning strategy or land use by-law, in accordance with this Section.

(2) Where the Minister proceeds pursuant to subsection (1), he shall:

(a) advise the council of the particulars of the conflict; and

(b) request the council to submit proposals for resolution of the conflict within such number of days, not less than ninety, as the Minister determines.

(3) Where the council fails to respond to the notification of the Minister under subsection (2), or where, after consultation with the council the Minister and the council cannot

ANNOTATION AND DISCUSSION

(4) *If the council does not at this point follow the direction of the Minister, then the Minister may make the required amendments to the municipal planning strategy and zoning by-law.*

(5) *The Minister shall give public notification of these amendments by newspaper advertisement.*

Section 13: *This section enables compensation of landowners for designation of lands for public purposes under a provincial land use regulation on*

(1) *the same basis as the PARC has recommended for municipalities implementing a municipal planning strategy. Subsection (1) provides for the designation of private lands for future use as parks or recreational areas.*

(2) *The Minister shall ensure that the municipal planning strategy and land use by-law comply with the designation by following the process described in Section 12.*

(3) *Owners of private lands designated under this section will be compensated by the Province in accordance with Section 14.*

Section 14: *Subsection (1) provides that a designation under Section 13 may be*

(1) *for a period of not more than three years.*

(2) *Where private lands are designated under this section the owners shall be paid annually at least ten percent of the assessed value of the designated lands, with interest.*

(3) *If the Province wishes to acquire the property, monies paid under this section may be credited toward the purchase.*

agree on a method to resolve the conflict, then the Minister may direct the council to amend its planning strategy or land use by-law in the manner prescribed by the Minister.

(4) Where the council does not amend its municipal planning strategy and land use by-law as directed, the Minister may amend them.

(5) When the Minister has amended a municipal planning strategy or land use by-law in accordance with subsection (4), he shall give notice of the amendment in a newspaper circulating in the municipality, and the notice shall provide a synopsis of the amendment and indicate where it can be inspected by interested persons.

Land for Park or Recreation Purposes

13 (1) Subject to Section 14, where a provincial land use policy has identified areas of land for future use as park or recreational areas, a provincial land use regulation may designate privately owned lands for such use.

(2) The Minister shall proceed in accordance with Section 12 to have any applicable municipal planning strategy and land use by-law comply with the designation.

(3) Where the municipal planning strategy and land use by-law have been so amended, the Province shall compensate the owner of the property in accordance with Section 14.

Compensation For Designation

14 (1) A designation pursuant to Section 13 shall not exceed a period of three years from the date of the prescription of the regulation.

(2) Where a designation is made, the Province shall at the date of the designation and annually thereafter pay to the owner an amount of money equal to at least ten percent of the assessed value of the land at the time of the designation, with interest at the rate charged for overdue rates and taxes by the municipality in which the land is located.

(3) Monies paid pursuant to subsection (2) may be credited towards the purchase price of the property, but the interest paid shall not be so credited.

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S15: Section 15 prohibits a municipal development officer from granting a development permit which is inconsistent with a proposed provincial land use regulation for 120 days after the Minister has given notice of the intent to adopt the regulation [Section 10(3)].

The purpose of this provision is to allow time for municipal planning strategies and land use by-laws to be amended, if necessary, to comply with the provincial land use regulations.

The consequences of this provision and Section 11 are that no person shall be required to obtain both provincial and municipal permits. The Department considered the establishment of parallel provincial and municipal development control procedures. This would have allowed the Province to administer its own land use regulations, even in areas with municipal planning strategies and land use by-laws. It would have avoided requiring municipal planning strategies to be amended to carry out provincial policy statements. This approach was rejected for two reasons. Most importantly, it seemed unreasonable to ask members of the public to obtain two permits from two development officers in different offices, perhaps miles apart, or to establish a permit referral system betwen such offices. Also, a two-tier approach would be less efficient and less economical. Where no municipal planning strategy is in place the Province will administer its own regulations. Where municipal planning strategies are adopted, they will comply with provincial land use policy statements. The Department agrees with the PARC recommendation that the Province share in the administration costs of these documents.

S16: Provincial land use policies regulations will be treated in the same manner as other provincial regulations, which require publication in the Royal Gazette before they are effective.

S17: Provincial land use policies and regulations will, upon adoption, be published for public information, sent to the clerk of each affected municipality and filed in each relevant registry of deeds.

(2) When the Minister amends a municipal planning strategy he shall file the amendment in the Registry of Deeds.

S18: This section establishes review procedures for provincial land use policies and regulations similar to those which are proposed for municipal planning
(1) strategies and land use by-laws.

(2) The amendment or repeal of provincial land use policies and regulations shall follow the same process as their adoption.

S19: This section provides for an appeal from the decision of a provincial development officer to refuse a development permit. This situation can occur only where no municipal planning strategy and land use by-law are in effect. The applicant has fifteen days following the written decision of the development officer to appeal to the Municipal Board.

No Municipal Development Permit To Be Issued

15 No municipal development permit shall be issued which is inconsistent with a proposed provincial land use regulation for a period of one hundred and twenty days from the date of the written notice of the Minister pursuant to Section 10.

Regulations Act

16 The exercise of authority pursuant to Sections 8 and 10 shall be regulations within the meaning of the Regulations Act.

Policies and Regulations To Be Published

17 (1) Upon adoption of a provincial land use policy or regulation, the Minister shall cause the policy or regulation or a copy thereof

(a) to be published and made available to the public;

(b) to be filed with the clerk of each municipality affected by the policy or regulation; and

(c) to be filed in the registry of deeds for each registration district affected by the policy or regulation.

(2) An amendment made by the Minister in a municipal planning strategy pursuant to Section 12 shall be filed in the registry of deeds by the Minister.

Review of Policy and Regulations

18 (1) Provincial land use policies and regulations shall be reviewed by the Governor in Council when requested by a Minister of a Department of the Province, but in any case the review shall take place not more than five years from the adoption or date of the last review.

(2) The provisions of this Act respecting the formulation, examination, adoption, publication and filing of and comment upon provincial land use policies and regulations apply mutatis mutandis to their amendment or repeal.

Appeal

19 (1) The refusal by a provincial development officer to issue a provincial development permit may be appealed by an applicant.

(2) A notice of appeal shall be filed with the Board within fifteen days of the date of the written decision of the provincial development officer.

Sections 15, 16, 17, 18, 19

ANNOTATION AND DISCUSSION

(3) The Board shall determine whether the proposed development is consistent with the provincial land use regulations.

(4) The Board may:

(a) confirm the decision of the provincial development officer;

(b) allow the appeal by granting the permit, and may attach conditions to the permit that, in the opinion of the Board, are necessary to ensure conformity with applicable provincial land use regulations.

ANNOTATION AND DISCUSSION - MUNICIPAL PLANNING

This section enables municipalities to adopt municipal planning strategies and identifies the topics which the strategy may deal with. Those familiar with the current Act and the PARC final report will recognize the municipal planning strategy as a replacement for the current municipal development plan. The municipal planning strategy is envisioned as a formal statement of management policies by which a council intends to make land use, capital programming, and other decisions. A municipal planning strategy may be for all or part of a municipality and council may choose to deal with as few or as many policy areas as it deems necessary.

Section 20: (1) *Municipal planning strategies are enabled for all part of a municipality.*

(2) *This section identifies the purpose of a municipal planning strategy. Two central themes in municipal planning are established in addition to the former land use theme, (i) integration with municipal management, (ii) public participation.*

Section 21: (1) *Subsection (1) requires municipal planning strategies to carry out the intent of any applicable provincial land use policies.*

(2) *Subsection (2) establishes the topics which may be dealt with in a municipal planning strategy. In addition to the topics dealt with by municipal development plans under the current Act municipal planning strategies might contain policies with respect to the following: resource lands; special places and view planes; extractive uses; environmental management; landscaping; subdivision; energy conservation; solar access; public participation; private roads.*

MUNICIPAL PLANNING

Municipal Planning Strategies

20 (1) A municipality may adopt a municipal planning strategy for all or part of the municipality, and there may be separate municipal planning strategies for different parts of or communities within the municipality.

(2) It shall be the purpose of a municipal planning strategy to:

(a) serve as a policy framework for the management of the municipality;

(b) establish policies which address problems and opportunities concerning the development of land, and the environmental and fiscal effects of that development;

(c) establish policies concerning the role of the public in determining community goals and objectives and in the formulation of the methods of implementation of the planning strategy; and

(d) to establish and specify programs and actions necessary for the implementation of the planning strategy.

Content of Municipal Planning Strategies

21 (1) A municipal planning strategy shall include any policies necessary to carry out the intent of applicable provincial land use policies.

(2) A municipal planning strategy may include statements of policy with respect to any or all of the following:

(a) the goals and objectives of the municipality for its future;

(b) the improvement of the physical and social environment of the municipality;

(c) the identification, use, protection and development of lands and other resources, including agricultural land and activities, forested areas, natural and wildlife areas, water supply areas and groundwater recharge areas;

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(d) the use, identification, protection and development of flood plains, steep slopes, lands susceptible to subsidence, erosion, swamps, marshes and other environmentally sensitive areas;

(e) the preservation, protection, or enhancement of areas of land, buildings, and structures by reason of their historical, archeological, architectural, environmental or scenic significance;

(f) preservation of viewplanes;

(g) the location of top soil removal areas, gravel and sand pits, quarries, and other extractive uses;

(h) the use, change in use or intensity of use of residential, commercial, industrial, recreational, open space, institutional and other activities on or affecting the land;

(i) the continuance of discontinuance of non-conforming uses in accordance with the requirements of this Act;

(j) land use control measures;

(k) location or circumstances where environmental studies are to be carried out prior to th approval cf a development;

(l) landscaping of developments;

(m) dedications of land or cash in lieu arising from the subdivision of land;

(n) measures for informing and securing the views of the public regarding contemplated planning policies and actions or regulations arising from such policies;

(o) the reservation of land for public purposes;

(p) the use and conservation of energy;

(q) access to sunlight;

(r) storm water management;

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(s) the provision of an adequate and efficient transportation network and related systems;

(t) private roads;

(u) the provision of municipal services and facilities including

(i) public or public assisted housing,

(ii) facilities for the provision of health and social services,

(iii) educational and cultural institutions,

(iv) public buildings,

(v) parklands, playgrounds, public open spaces, and other recreational facilities,

(vi) the collection, treatment and disposal of sewage and the disposal of refuse,

(vii) the programming of municipal investment in respect of public and private development and public facilities and services, in terms of cost and available financial resources, including the phasing of the development or redevelopment of various areas of the municipality;

(v) the coordination of public programmes relating to the economic, social and physical development of the municipality;

(w) the phasing of development or the provision of specific time for the existence of certain developments;

(x) the supply and distribution of water, including the management and protection of watershed areas, water treatment, transmission and distribution;

(y) subdivision and development of land; and

(z) any other matter related to the physical, social or economic environment of the municipality.

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Section 22: This section provides that as a first step in the planning process a Council must by resolution adopt a public participation program.

Section 23: In order that municipal planning strategies will be developed consistently with any provincial land use policies adopted under the Act, this section requires that a Council consult with the Minister to determine what provincial policies and regulations may apply to the municipality.

Section 24: This section requires municipalities to carry out those studies which are necessary to provide a basis for the policies included in the municipal planning strategy.

(1)

(2) This subsection identifies categories of studies which may be included in the planning process.

Public Participation Program

22 Before undertaking the preparation of a municipal planning strategy, a council shall adopt, by resolution, a public participation program, which shall identify opportunities and establish ways and means of seeking the opinion of persons in the municipality on the contents of a municipal planning strategy.

Consultation With Minister

23 Before beginning the preparation of a municipal planning strategy, a council shall consult with the Minister to determine which provincial land use policies and regulations, if any, are applicable to the municipality.

Studies Necessary

24 (1) In the preparation of a municipal planning strategy, the council shall undertake such studies or provide such information to the Minister as is necessary to support statements of policy in the municipal planning strategy.

(2) Such studies may consist of any or all of the following:

(a) the probable social, environmental and fiscal consequences of proposed policies;

(b) the convenient movement of people and goods by public and private modes of transportation within the planning area and to and from surrounding areas;

(c) municipal facility and service requirements in relation to projections of population;

(d) the promotion of the efficient use of all forms of energy within the planning areas;

(e) the optimum use of public funds;

(f) the character of the planning area and the preservation or enhancement of the amenities within it;

(g) the stated objectives, policies and programmes of the provincial government;

(h) the characteristics and suitability of land for various uses;

ANNOTATION AND DISCUSSION

(3) *The studies undertaken under this section are required to be available to the public at the municipal office.*

Section 25: *Ministerial approval is required for a municipal planning strategy.*
(1)

(2) *The PARC interim and final reports argued strongly in favour of municipal autonomy in policy decisions. In response, this section requires that the Ministers' approval can only be withheld where in the opinion of the Minister; the strategy would contravene a law; or, it conflicts with a provincial land use policy or an inter-municipal planning strategy; or land use controls adopted to implement the strategy are not consistent with the policies in the strategy.*

Section 26: *This section establishes the procedure a Council must follow in adopting a municipal planning strategy. Public hearings are to be advertised before, and held to receive written and verbal comments from the public. The council must make the proposed municipal planning strategy available to the public for review prior to the hearing. Following the hearing the council may adopt the strategy by a majority vote of the whole council.*

(i) comparability with planning activities of adjacent municipalities;

(j) land use requirements in relation to projections of population and economic growth.

(3) A council shall provide the public with reasonable access to all background information and studies produced during the preparation of a municipal planning strategy.

Approval of Minister

25 (1) A municipal planning strategy takes effect upon, and not before, approval by the Minister.

(2) The Minister shall approve a municipal or intermunicipal planning strategy submitted to him for approval unless

(a) it contravenes or conflicts with the law;

(b) it conflicts with an applicable provincial land use policy;

(c) the municipal planning strategy is not in conformity with an applicable inter-municipal planning strategy;

(d) in the opinion of the Minister, the land use by-law adopted by the council to carry out the intent of the municipal planning strategy is not consistent with the strategy.

Adoption of Municipal Planning Strategies

26 (1) Before adopting a municipal planning strategy, a council shall hold a public hearing at which oral and written submissions are received.

(2) The council shall cause notice to be given of the public hearing and of its intention to adopt a municipal planning strategy by an advertisement inserted at least once a week for two successive weeks in a newspaper published or circulated in the area affected, the first of such notices to be published at least twenty-one clear days before the date fixed for the hearing.

(3) The notic of the public hearing shall state the place where and the hours during which the proposed municipal planning strategy may be inspected by any interested person and the time and place set for the public hearing.

ANNOTATION AND DISCUSSION

Section 27: *This section establishes the requirements for submitting a municipal planning strategy to the Minister.*

Section 28: *This section requires that a municipal planning strategy be reviewed within five years of its adoption, or earlier if decided by the council or the Minister.*

(1)

(3) *In order or avoid confusion concerning whether a municipal planning strategy has been reviewed in conformance with this section, subsection (3) requires a report and supporting documentation to be filed with the Minister when a review has been completed but no amendments are deemed necessary.*

(4) The council shall make suitable provisions for the inspection of the proposed municipal planning strategy by interested persons, and shall provide copies at cost to interested persons.

(5) It shall be necessary in the advertisement to describe by metes and bounds the area to be dealt with by the proposed municipal planning strategy, but the advertisement shall contain a plan or map adequate to identify the area.

(6) A municipal planning strategy shall be adopted by by-law passed by a majority vote of the whole council, after consideration of all submissions received pursuant to subsection (1).

(7) On or before the date of publication of the notice, a copy of the notice shall be given to the clerk of each municipality within three miles of the municipality intending to adopt the strategy.

Proof of Compliance Required

27 When a municipal planning strategy is submitted to the Minister for his approval, the clerk shall provide, by statutory declaration, proof of compliance with Section 26.

Review of Municipal Planning Strategy

28 (1) The council shall review its municipal planning strategy when

(a) the council deems it advisable, or

(b) when requested by the Minister; but in any case within five years from the date of its coming into force, or the date of its last review.

(2) In reviewing a municipal planning strategy, the council shall

(a) adopt a public participation program for the purpose of the review, and

(b) review any studies undertaken before the adoption of the municipal planning strategy, and prepare any additional studies that may be required.

(3) If, after the review has been carried out, the council decides to make no changes to the municipal planning strategy, it shall file a report with the Minister, with supporting documentation.

ANNOTATION AND DISCUSSION

Section 29: *(1)* *The amendment procedure for a municipal planning strategy is the same as for adoption.*

(2) *Ministerial approval is required for amendments to a municipal planning strategy under the same conditions as for the original approval. See Sections 26 and 27.*

Section 30: *(1)* *A secondary planning strategy or detailed area plan may be provided for in a municipal planning strategy. The adoption of a secondary planning strategy will be considered to be an amendment and must follow the process of notice, public hearing, etc.*

Section 31: *This section requires the council, upon the Minister's signature of a municipal planning strategy or any amendment, to give public notice, send a copy of the notice to the Minister, and file a copy of the strategy or amendment in the Registry of Deeds.*

Amendment of Municipal Planning Strategy

29 (1) A municipal planning strategy may be admended or replaced and the same procedure shall be followed for amending it as for the adoption of a municipal planning strategy.

(2) An amendment to a municipal planning strategy is subject to the approval of the Minister, and the provisions of Sections 26 and 27 shall apply to any such amendment.

Secondary Strategies

30 (1) A municipal planning strategy may provide for the preparation of a secondary strategy, to apply in addition to a named area of the municipality.

(2) A secondary strategy shall be considered as an amendment to the municipal planning strategy and the provisions of Sections 22, 26 and 27 shall apply to the preparation and adoption of the secondary strategy.

Public Notice of Coming Into Force of Municipal Planning Strategy

31 Upon the approval of the Minister of a municipal planning strategy, a secondary strategy, or any amendment thereto, the council shall

(a) cause a notice to be published in a newspaper published or circulated in the area affected stating that the planning strategy has been approved and the place it may be inspected;

(b) transmit a copy of the notice to the Minister; and

(c) cause a copy of the planning strategy signed by the Minister to be filed in the registry of deeds for the registration district in which the planning area is situate without proof of the signature or the official character of the Minister.

ANNOTATION AND DISCUSSION - INTER-MUNICIPAL PLANNING STRATEGIES

As PARC pointed out in its final report, many planning issues in Nova Scotia transcend municipal boundaries. In some instances these issues may affect a provincial interest and may be dealt with by provincial land use policies. Other issues do not affect any provincial interest and may be best resolved by the joint action of two or more municipalities. This section provides a mechanism by which municipalities may undertake joint planning exercises should they choose to do so.

Inter-municipal planning strategies would be prepared, adopted, and amended by the agreement of two or more municipalities. Any of the subjects that may be covered in a municipal planning strategy could be included. Once adopted and approved by the Minister, an inter-municipal planning strategy would become part of the municipal planning strategies of the participating units. An inter-municipal planning strategy will be approved by the Minister under the same conditions as are provided for a municipal planning strategy. These are set out in Section 25(2).

INTER-MUNICIPAL PLANNING STRATEGIES

Inter-Municipal Planning Strategies

32 (1) The councils of two or more municipalities may agree to adopt and adopt a mutually binding inter-municipal planning strategy, which may contain policies on any of the matters which a municipal planning strategy may address.

(2) An inter-municipal planning strategy may not be amended of repealed unless all councils that approved the inter-municipal planning strategy have also approved of the amendment or repeal.

(3) An inter-municipal planning strategy and any amendment or repeal thereof is not effective until approved by the Minister.

Application

33 An inter-municipal planning strategy may apply to all or part of a municipality as the council may determine.

Adoption

34 An inter-municipal planning strategy shall be adopted in the same manner, and shall form part of the municipal planning strategy for each council which has adopted it.

Advisory

35 Where two or more councils have decided to prepare an inter-municipal planning strategy, advice in the preparation of the strategy may be provided through the District Planning Commission in which the councils participate, through the planning advisory committees of the councils, or through a joint planning advisory committee, as the council may by resolution determine.

Sections 32, 33, 34, 35

ANNOTATION AND DISCUSSION - MISCELLANEOUS

Section 36: *This section gives the same effect to a municipal planning strategy as the current Planning Act gives to municipal development plans in Section 19.*

Section 37: *This section enables councils to acquire lands needed to carry out projects identified in a municipal planning strategy. The council may acquire, subdivide, and dispose of such lands. This section is the same as Section 21 in the current Planning Act.*

MISCELLANEOUS

Municipal Responsibility

36 (1) Adoption of a municipal planning strategy shall not commit a council to undertake any of the projects suggested or outlined in the planning strategy.

(2) A council shall not undertake any development within the scope of a mnicpal planning strategy in any manner inconsistent or at variance with the planning strategy.

Land Acquisition

37 (1) The council may acquire and assemble lands necessary for the carrying out of any development consistent with the municipal planning strategy whether the development is to be undertaken by the council or not and such lands may include:

(a) the remnants of parcels, portions of which are essential to carrying out the development;

(b) any lands which may be injuriously affected by the development;

(c) any lands which, if allowed to be built upon without restriction, might become the site of buildings or structures which would prejudicially affect the full enjoyment of any building forming part of the development or the architectural effect thereof;

(d) any lands which the council considers could be conveniently subdivided or rearranged and developed as part of the development.

(2) The council, for the purpose of this Act, may purchase or otherwise acquire lands for carrying out the municipal planning strategy.

(3) The council may subdivide, re-arrange and deal with the said lands as if it were a private owner, and sell the same to such persons subject to such building and other restrictions or easements as the council may require, or deem advisable.

(4) In lieu of acquiring title to any such lands, the council may, by agreement with the owners, or by expropriation, acquire the right to cause to be imposed upon the lands or to be created such building restrictions or easements as might have been imposed or created if the council had acquired the title.

ANNOTATION AND DISCUSSION - LAND USE BY-LAWS

In recent years the increasing use of land use controls methods in addition to zoning has caused some confusion. Hopefully, having one by-law called a land use by-law and containing all land use controls proposed to implement a municipal planning strategy, will lessen the confusion. As many municipal units are in their second or third generation of planning documents the Department anticipates increasing use of development agreements, performance standards, and other techniques in addition to zoning.

S38: (1) *This section provides that where a municipal planning strategy proposes any control of land use, a land use by-law must be adopted by council before the strategy is submitted for the Minister's approval. A municipality not wishing to control land use would not require a by-law.*

(2) *This subsection emphasizes that a land use by-law must implement the intent of the municipal planning strategy.*

S39: *This section enables the land use by-law to provide for any of the following land use controls; zoning, comprehensive development districts, development agreements, and performance standards which are to be used to regulate land use. Zoning has been by far the most common land use control used under the current Planning Act. However, in recent years the Department has been aware of an increasing tendency to use more flexible methods. As with zoning, these other methods allow councils to regulate development - consistently with policies established in a municipal planning strategy. Comprehensive development districts are provided for in the current Planning Act. They will allow a council to examine integrated development proposals for areas identified in a municipal planning strategy. Development agreements, sometimes called contract zoning, allow council to define types of development and geographic areas for which a written agreement between council and the developer will be required before development is permitted. The uses, areas, and criteria for council to consider in entering an agreement should be clearly stated in the municipal planning strategy. Performance standards may be used to regulate development in terms of its impacts upon the surrounding area. A council might wish to require side yards for intensive livestock barns but to make the requirement vary with the number of animals kept. Where a municipal planning strategy identifies a specific concern, a flexible performance standard may be included in the land use by-law.*

S40: *This section enables zoning in much the same manner as the current Planning Act and requires any zoning provisions to be included in the land use by-law. Zoning authority has been expanded slightly beyond that in the existing Planning Act. In addition to those things which may currently be regulated in a zoning by-law specific provision is made for:*

- *regulating the location of sand and gravel pits and quarries;*
- *providing for solar access;*
- *regulating landscaping;*
- *requiring screening of outdoor storage;*
- *regulation of population density in terms of dwelling units.*

LAND USE BY-LAWS

Land Use By-law

38 (1) Where a municipal planning strategy contains statements of policy with respect to the control of land use and development, the council shall adopt a land use by-law before submitting the municipal planning strategy to the Minister for approval.

(2) A council shall not adopt or amend a land use by-law except to carry out the intent of a municipal planning strategy.

Content

39 A land use by-law shall provide for any or all of the following subject to Sections 40, 41, 42 and 43:

(a) the establishment of zones in the area covered by the municipal planning strategy;

(b) allowing developments by agreement between the council and the owner of property;

(c) the establishment of comprehensive development districts; and

(d) allowing developments by the application of performance standards.

Zones

40 (1) Where a land use by-law is to provide for the establishment of zones, the by-law shall be in form of maps and text.

(2) The maps shall divide the area of the municipality to which the by-law applies into zones, and the by-law shall prescribe for each zone permitted or prohibited uses of land, buildings or structures.

(3) The by-law may provide for any or all of the following, in order to carry out the intent of the municipal planning strategy:

(a) prescribe the minimum size of lots or parcels into which land may be subdivided and the minimum area of land required for any particular class of use or size of building;

(b) regulate or prohibit the use of land except for such purposes as may be set out in the by-law;

ANNOTATION AND DISCUSSION

(c) regulate or prohibit the erection or use of buildings or structures except for such purposes as may be set out in the by-law;

(d) regulate the location of sand and gravel pits or quarries;

(e) establish for any zone, the minimum floor area for each use that may be placed on any lot;

(f) establish the location, size and number of accesses from a parcel to an adjoining highway or street, but permitting at least one access from an adjoining highway or street;

(g) regulate the location, height, area and bulk of any building or other structure to be erected, constructed, reconstructed, moved or repaired;

(h) regulate the amount of land that, in any zone, may be covered by buildings or structures and the size of yards, courts and other open spaces;

(i) to facilitate solar access regulate the distances between buildings and the height and siting of buildings;

(j) regulate or prohibit the public display of advertisement and regulate the nature, kind, size and description of any advertisement displayed;

(k) regulate or prohibit the placement of fences, walks, hedges, shrubs, and trees and other landscaping, including the height of them;

(l) regulate or prohibit the outdoor storage of goods, machinery, vehicles, building materials, waste materials and other items and require outdoor storage sites to be screened by fences, hedges, or buildings;

(m) regulate the permissible densities of population which may be expressed on the basis of the number of dwelling units per units of area;

(n) regulate the architectural design, character and external appearance of buildings.

ANNOTATION AND DISCUSSION

Section 41: *This section enables a council to include development by agreement in a land use by-law. Only uses which are not otherwise permitted by the by-law (usually this will mean permitted by the zoning provisions) shall be considered for development agreements. The factors which council will examine in considering the development of any use by agreement must be identified in the municipal planning strategy.*

Section 42: *A council may provide for the designation of comprehensive development districts. The land use by-law should indicate the range of uses permitted in the areas included in the comprehensive development district. The municipal planning strategy should contain guiding policies.*

Section 43: *This section specifically enables the use of performance standards and their application in the land use by-law to either individual uses or to zones.*

The management of stormwater has been a serious problem in some urban areas. Subsection 2 allows a land use by-law to regulate the changing of land levels where this problem exists.

Section 45: *This section expands municipal authority to phase development. Hopefully, this will allow municipalities to make the best use of streets, water systems, and sewer systems already in place. Councils may prohibit development on lands which are very difficult to provide services to, or are otherwise unsuitable for development.*

Development By Agreement

41 (1) Where the municipal planning strategy so provides, the land use by-law may provide for development by agreement.

(2) Developments that are to be permitted by agreement shall be identified in the land use by-law, and shall be developments that are not otherwise permitted by the by-law.

(3) The municipal planning strategy shall identify the matters that council shall consider prior to approval of an agreement.

Comprehensive Development Districts

42 (1) Where the municipal planning strategy so provides, a land use by-law may designate an area or areas as comprehensive development districts, or may provide for the future designation of comprehensive devleopment districts.

(2) Developments that are to be permitted in the comprehensive development district shall be identified in the land use by-law, and the municipal planning strategy shall identify the general range of uses that will be permitted in the comprehensive development districts.

Performance Standards

43 (1) A land use by-law may, where the municipal planning strategy so provides, prescribe for any zone or for any permitted use, performance standards, or conditions which developments must meet, and no development permit shall be issued unless the development office is satisfied that the development will conform to the standards prescribed.

(2) A land use by-law may, where the municipal planning strategy so provides, regulate or prohibit the altering of land levels, or the excavation of filling in of land, or the removal of soil or other materials from land, where it is necessary to protect surface drainage, or an established water table.

Limited Development Permitted

44 Where the municipal planning strategy so provides, a land use by-law may prescribe the period of time for which a development may be permitted.

Prohibition of Development

45 (1) A land use by-law may, where the municipal planning strategy so provides, prohibit development or certain classes of development where the cost of providing municipal services, in the opinion of council, would be prohibitive or where the provision of municipal services in the opinion of council, would be premature.

Sections 41, 42, 43, 44, 45

ANNOTATION AND DISCUSSION

Section 46: *A municipal planning strategy may provide for the designation in the land use by-law of private lands for park or recreational uses for up to three years. Where private lands are designated, the municipality is required to compensate the owner by paying him at least ten percent of the value of the property annually. Should the municipality acquire the property any annual payments may be credited to the purchase price.*

Section 47: *A land use by-law may establish parking requirements. If a council makes provision in its municipal planning strategy it may establish cash-in-lieu contributions toward the acquisition of municipal parking facilities.*

(2) A land use by-law may, where the municipal planning strategy so provides, prohibit the erection of any building or structure

(a) within a specified distance of any lake, river, watercourse or body of water; or

(b) on land that is subject to flooding or subsidence or is low lying, marshy or unstable, or is otherwise hazardous for development by virtue of its soil conditions or topography.

Designation For Park and Recreation

46 (1) Where a municipal planning strategy so provides, a land use by-law may designate privately owned lands for use as park or recreation lands.

(2) A designation pursuant to subsection (1) shall not exceed a period of three years from the date of approval of the municipal planning strategy and the municipal planning strategy and land use by-law shall provide for reasonable non-public use of the land, which use shall come into effect if the municipality does not acquire the land within three years.

(3) If a municipality designates land for park or recreation pursuant to this Section, it shall pay annually to the owner of the land an amount of money equal to at least ten percent of the assessed value of the land beginning at the time of the designation and during the term of the designation, with interest at the same rate as the council charges pursuant to the Assessment Act for overdue payments of rates and taxes.

(4) Monies paid pursuant to subsection (3) shall be credited towards the purchase price of the property, but the interest paid shall not be so credited.

Parking

47 (1) A land use by-law may require the owners or occupants of buildings or other structures to be erected or used for any purpose specified in the by-law to provide and maintain any necessary loading or parking facilities on land that is not part of a highway to which the Public Highways Act applies or part of a street.

(2) Where the municipal planning strategy so provides, the council may accept cash in lieu of providing the parking facilities required in subsection (1).

ANNOTATION AND DISCUSSION

Section 48: *This section provides for the same notice and public hearing procedures for adopting, amending or repealing a land use by-law as are required for a municipal planning strategy. The hearings for the strategy and the by-law may be held at one time, when a land use by-law is being adopted to implement a municipal planning strategy or a secondary strategy.*

Section 49: *A land use by-law requires the approval of the Minister, but this approval will only be withheld if the by-law contravenes another law or does not implement the municipal planning strategy.*

Section 50: *This section sets out the procedure for the amendment of a land use by-law. Public notice must be given of the proposed amendment and a hearing must be held (Section 26). Council may prescribe a fee to cover the costs of amendments. If an amendment is passed by council public notice of the change is required. Sections 56 and 57 set out provisions for appeal from a council's decision on a land use by-law amendment.*

(3) A contribution pursuant to subsection (2) shall be calculated as a sum for each parking space, to the standards required in subsection (1).

(4) Contributions received by the council shall be used to acquire, construct or maintain municipally-owned parking facilities in any area identified in the municipal planning strategy.

Adoption

48 (1) The council shall follow the procedure set out in Sections 26 and 27 for the adoption of a land use by-law.

(2) Where a land use by-law is being adopted to implement a municipal planning strategy, or a secondary strategy, the procedures may be carried out concurrently.

(3) The council shall include the preparation of a land use by-law for consideration in any public participation program.

Approval of Minister Required

49 (1) The adoption of a land use by-law to implement a municipal planning strategy and a secondary strategy is not effective until approved by the Minister.

(2) The Minister shall not withhold his approval of a land use by-law unless in the opinion of the Minister, it does not carry out the intent of a municipal planning strategy or, it contravenes or conflicts with the law.

Amendment of Land Use By-Law

50 (1) A land use by-law may be amended, and, in addition to the content of the notice required by Section 26, the notice advertising the proposed amendment shall contain:

(a) a statement of the purpose of the proposed amendment; and

(b) a description of the area affected, to be described by street, area, or map, or

(c) if the amendment is of general application, a description of the classes of property affected by reference to the classification in the land use by-law.

ANNOTATION AND DISCUSSION

Section 51: *Where a council has designated a comprehensive development district in the municipal planning strategy, an agreement between council and the landowner must be made before any development can take place. Once an agreement is signed, it will regulate the issuing of development permits.*

Section 52: *This section sets out the procedure to be followed by council in entering into development agreements. The same notice, public hearing, notice of decision, and appeal provisions apply as for an amendment to the land use by-law.*

(2) An application to amend the land use by-law may be made by any person, but if the applicant is not the owner of property affected by the amendment, and the amendment is not of general application, the clerk shall notify, by certified mail, any assessed owners, or any subsequent owners shown in the records in the regional assessment office, of property affected by the application.

(3) The council may prescribe a scale of fees to be payable for an application to amend the land use by-law, whichmay include the requirement to pay the costs of any notification and advertisement, and a reasonable fee for the processing of the application.

(4) Upon the passing of a by-law amending the land use by-law, the council shall give notice of its passing by an advertisement in a newspaper circulating in the area affected; and a copy of the by-law together with proof of compliance with the requirements of this Section and all written objections to the by-law and a copy of any reports of the planning advisory committee, or the district planning commission shall be filed with the Director within ten days of the passing of the by-law.

(5) The amendment of a land use by-law does not require the approval of the Minister, other than an amendment to implement a secondary strategy.

(6) An amendment to a land use by-law shall not come into force until the time for appeal has elapsed, or any appeals have been disposed of and the by-law has been affirmed by the Board.

Development In Comprehensive Development District

51 (1) No development shall be undertaken in a comprehensive development district unless there is an agreement between the owner of the property and the council.

(2) No development shall be undertaken in the comprehensive development district without a development permit, but a development permit may be granted to a person other than the owner of the property, provided that the proposed development is consistent with the agreement.

Agreements

52 (1) A council shall approve the entering into of an agreement under Sections 41 and 51, by resolution.

Sections 50, 51, 52

ANNOTATION AND DISCUSSION

Section 52: *Subsection (4) allows the parties to an agreement to provide flexibility on minor matters so that some amendments can be made without following the amendment procedure established in subsection (3). Matters which are to be exempt from the amendment procedure must be identified in the original agreement.*

(4)

Section 53: *This section is intended to provide guidance with respect to the content of development agreements or agreements for a comprehensive development district.*

(2) Before council passes a resolution approving entering into of an agreement for a contract development or a comprehensive development district, it shall follow the same procedure as for an amendment to the land use by-law.

(3) An agreement may be amended and, subject to subsections (4) and (5), the same procedure shall apply to the adoption of the amendment as is followed for the adoption of the agreement.

(4) An agreement may provide for matters which are considered by the parties to be substantial, and the amendment of which is subject to the amendment procedure in subsection (3), and other matters, the amendment of which will not be subject to those procedures.

(5) Where the council has elected to include matters in the agreement as provided for in subsection (4), these matters shall be included in the draft agreement for public consideration and this classification shall not be altered without following the procedure in subsection (3) hereof.

(6) A copy of the resolution passed under subsection (1) and of the agreement shall be filed with the Director within five days after the resolution has been passed by council.

Content of Agreements

53 (1) An agreement made between the council and the owner of the property may contain such terms and conditions as may be agreed upon by the council and the owner, and may include terms with respect to:

(a) matters that could be dealt with in Section 40;

(b) hours of operation; and

(c) maintenance of the development.

(2) An agreement may include site plans or maps, which shall form part of the agreement.

(3) An agreement may provide that, upon the completion of the development of phases of developmemt, that the agreement may be discharged in accordance with Section 54, and the develoment then be subject to such land use controls as the land use by-law may provide.

ANNOTATION AND DISCUSSION

Section 54: *Terms for the discharge of an agreement may be part of the agreement. Development agreements will remain in effect until discharged by the council. The agreements are binding upon subsequent purchasers of land unless discharged by council.*

Section 55: *Development agreements are required to be registered.*

Sections 56 - 60 deal with various appeals related to land use by-laws. All appeals in this section are to the Municipal Board and all appeal periods are fifteen days.

Those familir with the PARC Report will recognize that the recommendation with respect to only giving a right to appeal to "aggrieved persons" has not be accepted. The Department has instead adopted the standard used in the current Planning Act for those appealing regional development permits, i.e. a person who "considers himself aggrieved". It is the Department's view that this standard will have some effect on thoses taking appeals, but will not be as restrictive as the PARC recommendation.

(4) An agreement may otherwise provide for the time and conditions under which the agreement will be discharged.

Discharge of Agreement

54 (1) An agreement is in effect until discharged by the council.

(2) Where the owner of property which is subject to an agreement pursuant to this Part conveys the property or part thereof to a person not a party to the agreement, the agreement shall continue to apply to the property, unless discharged by the council with respect to the property, or any portion of it.

Registration Required

55 Every agreement entered into pursuant to this Part, and every amendment or discharged thereof, shall be registered in the registry of deeds for the registration district in which the property is located.

Appeal of Amendment To By-law

56 (1) The amendment or revision of a land use by-law by a council or the decision by a council, after consideration, not to amend the by-law, may be appealed by:

(a) a person who considers himself aggrieved;

(b) the Director; or

(c) the council of an adjoining municipality.

(2) An appeal with pursuant to subsection (1) shall be filed with the Board within fifteen days of the date of the advertisement describing the amendment that council has made.

(3) The Board shall, in considering an appeal under this Section, determine whether the proposed amendment or revision carries out the intent of the municipal planning strategy.

(4) The Board may:

(a) confirm the decision of the council, or

(b) make a decision that the council could have made consistent with the municipal planning strategy; or

(c) refer the matter back to the council for further consideration.

ANNOTATION AND DISCUSSION

Section 57: *If a council refuses to hold a public hearing to consider a request for an amendment to the land use by-law, the applicant may appeal following council's decision. At this point the Board, in effect, assumes council's powers with respect to the amendment, holds the public hearing, and may make any decision consistent with the municipal planning strategy.*

Section 58: *If a council passes a resolution approving the entering into of a development agreement, the appeal period begins with the publication of the required notice. A person who considers himself aggrieved, the Director, or the council of an adjoining municipality may appeal.*

Appeal Of Refusal To Consider Amendment

57 (1) Where the council has refused to consider amendment to the land use by-law after an application has been made to amend it, the applicant may appeal the refusal to the Board.

(2) An appeal pursuant to subsection (1) shall be filed with the Board within fifteen days of the date of council's decision.

(3) Before making a decision pursuant to this Section, the Board shall hold the same public hearing as would have been held had the council decided to consider amending the land use by-law, and the same requirements will apply to the holding of the hearing.

(4) The Board shall, in considering an appeal pursuant to this Section, determine whether the amendment applied for carries out the intent of the municipal planning strategy.

(5) The Board may:

(a) confirm the decision of the council to refuse to amend the land use by-law; or

(b) make a decision that the council could have made, consistent with the municipal planning strategy; or

(c) refer the matter back to the council for further consideraton.

Appeal Of Agreement

58 (1) Where a council has approved the entering into of an agreement pursuant to its municipal planning strategy and land use by-law, the decision of council may be appealed by:

(a) a person who consides himself aggrieved; or

(b) the Director; or

(c) the council of an adjoining municipality.

(2) An appeal pursuant to subsection (1) shall be filed with the Board within fifteen days of the date of the advertisement giving notice of council's intent to enter into an agreement.

ANNOTATION AND DISCUSSION

Section 59: *If a council refuses to enter into a development agreement, the applicant may appeal following council's decision. If the Board determines that the proposed development is consistent with the municipal planning strategy it shall notify council of this. If after sixty days the council and the applicant cannot make an agreement the Board may fix the terms of the agreement.*

(3) The Board shall, in considering an appeal pursuant to this Section, determine whether the proposed development carries out the intent of the municipal planning strategy.

(4) The Board may:

(a) confirm the decision of council; or

(b) make any decision that the council could have made with respect to the terms of the agreement; or

(c) refer the matter back to council for further consideration.

Appeal Of Refusal to Enter Into Agreement

59 (1) Where a council has refused to enter into an agreement, the refusal may be appealed by the applicant.

(2) An appeal pursuant to subsection (1) shall be filed with the Board within fifteen days of the date of council's decision.

(3) In considering an appeal pursuant to this Section, the Board shall determine whether the proposed development meets the policies of the municipal planning strategy.

(4) If the Board decides that the development does not meet the terms of the municpal planing strategy, it shall confirm the council's decision.

(5) If the Board concludes the the proposed development complies with the policies of the municpal planing strategy, it shall so notify the council.

(6) If the council and the applicant have not entered into an agreement within sixty days of the date of the Board's decision, the Board may fix the terms of the agreement by order, in accordance with the Municpal Board Act.

(7) The agreement shall then be registered in the same manner as if the agreement has been signed between the owner of the property and the council.

Appeal Of Zoning By-law Amendment

60 Where there is an appeal from a decision of council with respect to a zoning by-law in force by Section 113, the board shall not inferfere with the decision unless council's decision is inconsistent with or unnecessary for the protection of the best interests of the municipality.

ANNOTATION AND DISCUSSION - MUNICIPAL DEVELOPMENT PERMITS

Sections 61 - 64 provide for the administration of land use by-laws through the use of development permits. The by-laws will be administered by a development officer appointed by the municipality.

Section 61: *Where a municipality has adopted a land use by-law a development permit will be required for all developments, unless the by-law specifies exemptions. Similarly to the current Planning Act, a development permit cannot be refused on the grounds of conflict with the policies in a municipal planning strategy, if it complies with the land use by-law.*

Section 62: *A municipality must appoint one development officer to be responsible for administration of the land use by-law. While the council may appoint assistant development officers with the authority to issue permits it is intended that administrative responsibility rest with the development officer.*

MUNICIPAL DEVELOPMENT PERMITS

Development Permit Required

61 (1) Subject to subsection (4), when a council has adopted a land use by-law, a municipal development permit shall be required before any development is undertaken.

(2) No municipal development permit shall be issued that is not in conformity with the land use by-law, or with an agreement entered into pursuant to Sections 41 or 51.

(3) The land use by-law may prescribe the form of municipal development permits, and the form of application for a development permit.

(4) The land use by-law may specify developments for which no municipal development permit is required.

(5) No municipal development permit shall be refused by reason only that it conflicts with the municipal planning strategy.

(6) No municipal development permit shall be issued pursuant to a resolution of council approving the entering into of an agreement for a contract development or a comprehensive development district until the time for appeal has elapsed, or any appeal has been disposed of, and the agreement has been confirmed.

(7) No municipal development permit that is or may be inconsistent with a proposed land use by-law, or any proposed amendment or revision thereof shall be issued for a period of one hundred and twenty days from the publication of the first notice advertising the intention to adopt or amend.

(8) No municipal development permit shall be issued pursuant to an amendment to the land use by-law until the time for appeal has elapsed, or the appeal has been disposed of.

Development Officer

62 (1) A land use by-law shall provide for the appointment of a municipal development officer, who shall be responsible for the administration of the by-law, and the issuing of permits thereunder.

(2) Assistant municipal development officers maybe appointed to assist the municipal development officer in the administration of the by-law.

ANNOTATION AND DISCUSSION

Section 63: *PARC recommended throughout its final report that written reasons be available for administrative decisions. The Department agrees.*

Section 64: *If a municipal development permit is refused the applicant may appeal to the Board within fifteen days of the written decision of the development officer.*

Reasons For Refusal Of Permit

63 When the municipal development officer refuses to issue a municipal development permit, he shall provide written reasons for the refusal to the applicant.

64 (1) The refusal by a municipal development officer to issue a municipal development permit may be appealed by the applicant.

(2) A notice of appeal shall be filed with the Board within fifteen days of the date of the written decision of the municipal development officer.

(3) The Board may:

(a) confirm the decision of the municipal development officer; or

(b) allow the appeal by granting the permit, but no permit shall be inconsistent with the land use by-law or an agreement, as the case may be.

ANNOTATION AND DISCUSSION - MINOR VARIANCE

In order to provide some flexibility in the granting of development permits for developments which substantially satisfy all requirements of the land use by-law, this part provides for minor variances.

Section 65:

(1) *This subsection identifies the requirements of a land use by-law from which a development officer may grant a variance. The discretion of the development officer in granting a variance is limited by the conditions of subsections (2) and (3). These conditions are the same as in the current Planning Act except that additional guidance is given on determining whether a variance is minor.*

Section 66: *After granting a variance the development officer shall give notice to owners of property within one hundred feet of the property on which the variance was granted, and the Director. Those persons receiving notice are entitled to an appeal of the development officer's decision to the council.*

MINOR VARIANCE

Application For Minor Variance

65 (1) An application may be made to the municipal development officer to grant a minor variance from standards in the land use by-law with respect to:

(a) the percentage of land that may be built upon;

(b) the size of yards, courts and open spaces;

(c) lot size; or

(d) lot frontage.

(2) No variance shall be granted where the difficulty experienced is general to properties in the district or area or where the variance requested is not minor or where the difficulty results from the intentional or negligent conduct of the owner in relation to the property.

(3) A variance granted shall not vary the intent of the standard to be varied.

Appeal Of Variance

66 (1) Within seven days after the municipal development officer grants a minor variance, he shall so notify in writing the assessed owners, or any subsequent owners shown on the records in the regional assessment office, of property within one hundred feet of the subject property.

(2) The notice shall state:

(a) the variance granted;

(b) a description of the land with respect to which the variance has been granted;

(c) a notice of the right of appeal to the council;

and a copy of the notice shall be filed with the Director within five days of the issuing of the notice.

(3) Where a minor variance is granted, any one served with a notice pursuant to subsection (2), or the Director, may appeal the decision of the municipal development officer within ten days of the service.

ANNOTATION AND DISCUSSION

Section 67: *Where a variance is refused the applicant may appeal to council. Owners within 100 feet shall be notified of the appeal by the development officer.*

Section 68: *A development permit may be issued for any development granted a variance which otherwise conforms to the land use by-law once the appeal period is past and any appeals are disposed of.*

Appeal Of Refusal

67 (1) Where an application for the granting of a variance has been refused by the municipal development officer, the applicant may appeal the refusal to the council, within ten days of receipt of the written refusal.

(2) Where an appeal is made to council pursuant to subsection (1) notice shall be given to persons entitled to notice under subsection (1) of Section 66, at the expense of the applicant.

(3) The notice shall state:

(a) the variance applied for;

(b) a description of the land with respect to which the variance has been applied for;

(c) a notice of the date and time when council will consider the appeal,

and a copy of the notice shall be filed with the Director within five days of the issuing of the notice.

Council To Hear Appeal

68 (1) The council, after hearing the parties, may make any decision that the municipal development officer could have made.

(2) The municipal development officer may issue a municipal development permit for any development for which a variance had been granted and which otherwise complies with the land use by-law, but a permit shall not be issued until the time for appeal under Section 66 has elapsed or the appeal has been disposed of, whichever is the longer.

(3) If the council grants the variance requested, the municipal development officer shall issue a municipal development permit in accordance with the decision of the council.

ANNOTATION AND DISCUSSION- NON-CONFORMING USES AND BUILDINGS

Section 69: *This section provides certain protections for land uses or buildings which do not comply with a land use by-law. Where an existing use or building is made non-conforming by the adoption or amendment of a land use by-law the use or building may continue to exist.*

Subsection (2) is intended to make clear that the issuance of a building permit or development permit is sufficient to establish a non-conforming building or use. The amendment or adoption of a land use by-law will not affect the validity of the permit. This subsection is the same as Section 45 of the current Planning Act.

Section 70: *As in the current Planning Act, Section 46, when a development permit is in effect, contrary to a subsequent land use by-law, the council may revoke the permit if construction has not begun. Usually, this will apply if no building permit has been issued. Where a development permit is revoked council must pay any costs incurred by the developer.*

Section 71: *No additions or changes in volume other than those required by statute are allowed in a building containing a non-conforming use, but the use itself may be expanded to occupy the entire building. Unlike the current Planning Act, a non-conforming use is not permitted to change to any otheruse without complying with the land use by-law.*

NON-CONFORMING USES AND BUILDINGS

Establishment of Non-Conforming Uses

69 (1) Subject to the provision of this Act, a non-conforming building or structure, or non-conforming use of land, buildings or structures may continue to exist.

(2) A building or structure shall be deemed to be existing at the date of the first publication of the notice of intention to pass a by-law if:

(a) it was lawfully under construction; or

(b) the permit for its construction was in force and effect; but this clause shall not apply unless the construction is commenced within twelve months after the date of the issue of the permit and is completed in conformity with the permit within a reasonable time.

Cancellation Of Permit

70 (1) The council may cancel any permit in the circumstances of clause (b) of subsection (2) of Section 69 where the building or structure is not lawfully under construction by paying to the person on whose behalf the permit was obtained such reasonable expenses for the preparation of plans for the building or structure and the promotion of the development as may be agreed upon by the parties.

(2) In the event the parties are unable to agree upon the amount to be paid the person on whose behalf the permit was obtained may by written notice require that the municipality submit the claim to arbitration.

(3) The arbitration shall be by one arbitrator appointed by the parties or by the Minister if they are unable to agree.

Continuation of Non-Conforming Uses

71 (1) No change in volume or addition except as required by statute or by-law shall be made in a building or structure while a non-conforming use thereof is continued, but such use may be extended throughout the building.

(2) Where the existing use of the building does not conform to the land use by-law, the non-conforming use may not be changed to any other use unless the use is permitted by the land use by-law.

ANNOTATION AND DISCUSSION

Sections 72 - 74 deal with the ending of non-conforming uses or buildings and conform to the PARC recommendation on that matter.

Section 72: The basic criteria for ending a non-conforming use or non-conforming building are provided in this section. A change from the current Planning Act is that "council's opinion" is removed from the determination of damage.

Section 73: Councils are given flexibility to establish rules for ending non-conforming buildings and structures in their municipal planning strategies and to implement these rules by development agreements in the land use by-law. These rules can be no more restrictive than those in Section 72. The notice, hearing, and appeals procedure provided for development agreements is applicable in any agreements respecting non-conforming uses.

(3) A change of tenants or occupants of any premises or building shall not of itself be deemed to affect the use of the premises or building for the purposes of this Section.

Destruction Or Discontinuance

72 (1) If a building containing a non-conforming use is destroyed by fire or otherwise or is damaged by fire or otherwise to an extent of fifty percent or more of the building above its foundation, it shall not be rebuilt or repaired except in conformity with the land use by-law.

(2) A non-conforming use of land, buildings or structures shall not be recommenced if it has been discontinued for a period of six months, consecutively, and in such event the land, building or structure shall not thereafter be used except in conformity with the land use by-law.

Variation By Council

73 (1) A council may vary the provision of Sections 71 and 72, but no such variation shall further limit the right of the owner of property than is provided in said Sections.

(2) A land use by-law may, where the municipal planning strategy so provides.

(a) permit the alteration of non-conforming buildings or buildings containing non-conforming uses; and

(b) permit the extension or enlargement of non-conforming buildings or non-conforming uses in buildings.

(3) Where the municipal planning strategy so provides, the land use by-law may by agreement

(a) permit a non-conforming building destroyed to be rebuilt to the same size as it was before destruction;

(b) permit a non-conforming use of land, buildings or structures to be recommenced if it has been discontinued for a period in excess of six months;

(c) provide for the expansion or change in use or both of a non-conforming use or a non-conforming building;

ANNOTATION AND DISCUSSION

Section 74: *Councils are specifically enabled to acquire non-conforming uses.*

(d) permit a non-conforming building or building containing a non-conforming use to be altered in external appearance.

(4) The provisions of Sections 52, 53, 54, 55, 58 and 59 shall apply to agreements made under this Section.

Acquisition of Non-conforming Uses

74 The council may acquire by purchase, or otherwise non-conforming buildings or buildings or land containing non-conforming uses, where the council has determined that the use must be terminated for the public benefit.

ANNOTATION AND DISCUSSION - PLANNNING ADVISORY COMMITTEES

Planning Advisory Committees are retained with a similar role as in the current Planning Act. Sections 75 - 79 set out provisions respecting Planning Advisory Committees and Joint Planning Advisory Committees.

Section 76: *This section provides that a Planning Advisory Committee shall include at least two council members and two members from the public. The Department believes that a minimum of two councillors should sit on the Planning Advisory Committee in order that the committee will have a reasonably strong linkage with the council. Local area committees may be established by the Planning Advisory Committee with council's approval.*

Section 77: *The word "Assist" is dropped from the duties of a Planning Advisory Committee in the current Act to make clear that the committees are advisory only.*

Section 78: *This section provides for the establishment of Joint Planning Advisory Committees.*

PLANNING ADVISORY COMITTEES

AND

JOINT PLANNING ADVISORY COMMITTEES

Establishment

75 (1) The council may, by resolution, establish and appoint a planning advisory committee.

(2) The planning advisory committee may with the approval of the council, establish area planning advisory committees, to advise the planning advisory committee on planning matters affecting a specific area of the municipality.

Composition

76 (1) The planning advisory committee shall consist of both councillors and members of the public, as the council may determine, but it shall have at least two councillors and two members of the public.

(2) An area advisory committee shall consist of such members appointed by the planning advisory committee, and approved by the council.

Function

77 A planning advisory committee shall advise the council in the preparation, amendment, and replacement of a municipal planning strategy, land use by-law, subdivision by-law, and in planning matters generally.

Joint Planning Advisory Committee

78 (1) If a joint planning advisory committee is to be established for the preparation of an inter-municipal planning strategy, it shall consist of both councillors and members of the public, but it shall have at least two councillors and two members of the public from each municipality.

(2) A joint planning advisory committee may, with the approval of the councils, establish area advisory committees.

Appointment Of Members

79 (1) In this Section, and in Sections 80, 81, and 82, "committee" means a joint planning advisory committee, a planning advisory committee, and an area advisory committee.

(2) Council members of a committee shall be appointed for a term of one year, and other members shall be appointed for a term of two years.

(3) Any person appointed to a committee may be reappointed.

ANNOTATION AND DISCUSSION

Section 80: *This subsection provides that all Planning Advisory Committee meetings shall be open to the public unless the Planning Advisory Committee votes to meet in camera on a specific "named" matter.*

(1)

(2) *This section requires the posting of the Planning Advisory Committee's agenda in the municipal office at least five days before the meeting.*

(3) *This subsection provides for public access to Planning Advisory Committee minutes. Also, Planning Advisory Committee reports to council after they have been submitted to council shall be available to the public unless the council adopts a resolution to withhold them. The reports to council should provide the public with information on any reports to the committee which resulted in any action or recommendations by the Planning Advisory Committee.*

Meetings Of Committee

80 (1) All meetings of a committee shall be open to the public, unless the committee by majority vote of the members present, for a reasonable cause votes to meet in camera on a named matter.

(2) The proposed agenda for a meeting of the committee shall be posted by the clerk in the municipal office or in another conspicuous place, to be determined by the committee, at least five days before the date of the meeting.

(3) An interested person may inspect

(a) minutes of meetings of the committee after adoption by the committee, and

(b) reports of the committee to the council or councils, after they have been submitted to the councils, unless a council for a reasonable cause, determines otherwise.

Council Resolution

81 A council shall, in the resolution establishing a committee

(a) fix the remuneration, if any, to be paid to members of the committee;

(b) establish the procedure of the committee;

(c) provide for the appointment of the chairman and other officers of the committee.

Public Meetings

82 A committee may hold public meetings at such times and in such manner as the council may decide.

ANNOTATION AND DISCUSSION - DISTRICT PLANNING COMMISSIONS

With the increased scope of municipal planning proposed in this working paper it is anticipated that the need for District Planning Commissions to provide professional planning staff to their member municipalities will increase.

Section 84:

(1) *The subjects which may be included in the Minister's order to establish a District Planning Commission are identified in this section. Generally, the order may define the geographic area in which the Commission operates, its composition, funding, operating procedures, and relationships with other agencies. These are the same matters dealt with under the current Planning Act, Section 23(2).*

DISTRICT PLANNING COMMISSIONS

Establishment

83 (1) At the request of two or more councils, the Minister may establish, by order, a district planning commission.

(2) An order made pursuant to subsection (1) may be amended or repealed with the approval of all participating councils, and with the approval of the Minister.

(3) A commission established pursuant to the former Planning Act shall be a commission within the meaning of this Act.

Content Of Order

84 (1) An order establishing a commmission may specify:

(a) the name of the commission;

(b) the area with respect to which a commission shall exercise its powers;

(c) the municipalities, hereinafter referred to as the "participating municipalities", which shall be represented on the commission;

(d) the number of members to be appointed to the commission by each participating municipality;

(e) the term of office of members and conditions under which they cease to be members;

(f) the proportions in which each of the participating municipalities shall contribute to provide the funds required to meet the expenses of the commission, or a method by which the proportions are to be fixed;

(g) the officers and organization of the commission and how and when its meetings are to be held and its business transacted;

(h) the public agencies, boards or commissions, if any, which shall refer to the commission plans, schemes, studies or project proposals which may affect the planning and orderly development of the district, for the advice and assistance of the commission;

(i) such other matters as are necessary to carry into effect the intent of this Act.

ANNOTATION AND DISCUSSION

Section 84: *Subsection (2) specifies that a member of a District Planning Commission representing a member council shall cease to be a member if he ceases to be a councillor. However, a council may choose to affirm a former councillor as a representative on the District Planning Commission.*

(3) *If a District Planning Commission member is unable to carry out his duties, the council which appointed him shall appoint a replacement. If council fails to appoint a replacement the Minister may make the appointment.*

Section 85: *The duties of a District Planning Commission will be the same as under the current Planning Act, except for the deletion of regional planning.*

(2) A member of a commission who is a member of the council of a participating municipality shall cease to be a member of the commission when he ceases to be a member of the council unless his membership on the commission is affirmed by the council of the municipality.

(3) If for any reason a member is unable to act, the council he represents may appoint another for the balance of his term and if the council fails to appoint such a member, at the request of the commission, the Minister may appoint one.

Duties of Commission

85 (1) A commission shall

(a) advise and assist the council of any participating municipality in matters affecting planning generally;

(b) promote interest in the activities of the commission, and follow procedures established by the participating councils for involving members of the public in planning matters generally;

(c) advise and assist the council of any participating municipality in the preparation, amendment, or revision of a municipal planning strategy, land use by-law, or subdivision by-law;

(d) exercise such rights and powers and perform such duties as may be vested in it by the Minister or may be delegated to it by a council of a participating municipality, pursuant to this or any other Act.

(2) A commission may:

(a) expend its funds for any of the purposes of the commission;

(b) promote public interest in the planning and orderly development of the area;

(c) perform on behalf of any participating municipality such adminstrative functions in relation to planning as the municipalities may from time to time delegate with the approval of the Minister;

ANNOTATION AND DISCUSSION

Section 86: *District Planning Commission meetings shall be public but the Commission shall have the power for reasonable cause to move that a meeting be in camera.*

(1)

(2) *District Planning Commission meeting agendas shall be posted in the offices of participating municipalities by the clerks at least five days prior to the meeting.*

(3) *District Planning Commission minutes shall be available at each municipal office once adopted by the District Planning Commission. District Planning Commission reports to a council shall be available after submission to council unless the council adopts a motion to the contrary for particular reports.*

Section 87: *With the approval of participating councils and the Minister, a Commission may acquire and dispose of real property.*

(d) engage such community planners, consultants, clerks and others as may be necessary for the purposes of the commission and determine their salaries and other remuneration;

(e) employ development officers;

(f) do all such other matters and things as may be necessary for or incidential or conducive to the attainment of the foregoing.

Meetings Of Commission

86 (1) Meetings of a district planning commission shall be open to the public, unless the commission, by majority vote of the members present, and for a reasonable cause, votes to meet in camera on a named matter.

(2) The proposed agenda for a meeting of the commission shall be posted by the clerk of each participating municipality in the municipal office, or in another conspicuous place to be determined by the commission, at least five days before the date of the meeting.

(3) An interested person may inspect

(a) minutes of meetings of the commission after adoption by the commission; and

(b) reports of the commission to a participating council after they have been submitted to the council, unless the council, for a reasonable cause, determines otherwise.

Body Corporate

87 (1) Every commission established under this Act shall be a body corporate.

(2) A commission may, to the extent authorized by the participating councils, and with the approval of the councils and the Minister, acquire and dispose of real property.

Development Officers

88 Where a commission employs development officers pursuant to clause (e) of subsection (2) of Section 85, only one development officer shall be appointed to adminster the land use by-law or subdivision by-law for each municipality, but assistant development officers may be appointed to assist that development officer.

ANNOTATION AND DISCUSSION

Section 89: *Section 89 requires Commissions to submit an audited financial report to each of their participating municipalities by January 31st, annu-*

(1) *ally.*

(2) *Where a Commission's financial report indicates expenditures which were not included in the estimates submitted to the Minister for that year, the Minister may reduce the amount subject to any cost-sharing agreement by the amount of these expenditures.*

(3) *The District Planning Commission shall also by January 31st make an annual report to the Minister and their member municipalities on activities for the preceding year.*

Section 90: *This section sets out the funding arrangements for District Planning Commissions which are similar to those contained in the current Plan-*

(1 & 2) *ning Act. District Planning Commissions are required to submit an estimate of the next year's expenditures to the Minister and the clerk of each participating municipality by October 15th of each year. The Minister may determine that some estimated expenses unnecessary or unreasonable and exclude these from any cost sharing agreement.*

(3) *Subsection (3) maintains the same arbitration provisions for determining municipal contributions to a District Planning Commission as exist under the current Planning Act. If member municipalities agree upon an alternative method of questioning District Planning Commission estimates to that presented in subsection (3), they may have this method included in the order establishing the Commission.*

Financial Report

89 (1) Every commission shall not later than the thirty-first day of January in each year submit to the council of each participating municipality a financial report for the preceding year in a form acceptable to the Minister and signed by a registered municipal auditor; if the members of the commission are unable to agree upon an auditor, the Minister may appoint one.

(2) Where an expenditure included in a financial report was not included in the estimate submitted for that year, or is in excess of the estimated expenditure, the expenses of a commission for the purposes of any payment under an agreement made in Section 92 may be reduced by the Minister by the amount of the expenditure or the amount of the excess.

(3) Every commission shall not later than the thirty-first day of January make an annual report to the Minister and to the councils of the participating municipalities setting out its activities for the preceding year.

Estimates

90 (1) Every commission shall not later than the fifteenth day of October in each year submit to the Minister and to the clerk of each of the participating municipalities an estimate of its revenues and expenditures for the next year after adding thereto any anticipated deficit for the present year or deducting therefrom any anticipated surplus from the present year.

(2) Where any expense included in an estimate under subsection (1), is in the opinion of the Minister, unreasonable or unnecessary he may so notify the commission and if after such notice any such expense is incurred by the commission, it shall not be included in the expenses of the commission for the purposes of an agreement made pursuant to Section 92.

(3) If the council or the mayor or the warden of any of the participating municipalities is dissatisfied with the amount of the said estimate then within thirty days after the estimate has been delivered to the clerk of the participating municipality it or he may require the arbitration committree referred to in Sections 114 and 115 of the Assessment Act to determine and report the amount which, in their opinion, should be provided for the commission; and the said arbitation committees shall report thereon within ten days thereafter; if a board, commission or other committee performs the duties of the arbitration committee for that area then it shall determine and report such amount.

ANNOTATION AND DISCUSSION

Section 90:

(5) *A council is required to include its share of District Planning Commission expenditures in its annual estimates.*

(6) *Municipal contributions to a District Planning Commission are deemed to be one of the "ordinary lawful purposes" for which municipalities may raise and spend money.*

Section 93:

(1) *The approval of the Minister is required if a council wishes to withdraw from a District Planning Commission. If a council withdraws without the approval of the other participating councils any assets contributed to the Commission by the withdrawing council shall remain with the Commission.*

(2) *Where the participating municipalities agree to dissolve a District Planning Commission they must also agree on how the assets of the Commission will be distributed before the Minister orders the dissolution.*

(4) In lieu of the provisions of subsection (3), participating municipalities may agree on an alternate method for questioning the estimates of the commission which method shall be included by the Minister in the order establishing the commission.

(5) The council of each of the participating municipalities shall include in its annual estimate of expenditures its proportion of the estimate referred to in subsection (1), or if a report has been filed pursuant to subsection (3), its proportion of the amount set out in such report, or if the terms of the order are complied with, the amount established under the order.

(6) The sums required by the councils of the municipalities under this Section shall be held to be sums required for the ordinary lawful purposes of the municipalities and may be raised, levied and collected in the same manner and in all respects as are other sums required for the ordinary lawful purposes of the municipalities.

(7) The council of each participating municipality shall on a requisition signed by the chairman of the commission pay over to the commission all or part of the amount included in its estimates under subsections (4) and (5).

Supplementary Estimates

91 The commission may from time to time prepare supplementary estimates, and the provisions of Sections 89 and 90 shall be applied to the approval of the supplementary estimates.

92 The Minister may enter into an agreement with a commission to share in the costs and expenses of the commission but any such agreement shall provide that the Minister shall pay fifty percent of all costs of the commission including cost of services supplied under this Act to participating municipalities, where the Minister has approved of the commission carrying out these services.

Withdrawal and Dissolution

93 (1) Notwithstanding subsection (2) of Section 83, a council shall not withdraw from a district planning commission without the approval of the Minister, and where the withdrawal occurs without the approval of the other participating municipalities, the assets of the commission shall remain with the commission.

(2) Where a district planning commission is dissolved, the participating municipalities shall agree on the distribution of the assets before the Minister makes the order dissolving the commission.

Sections 90, 91, 92, 93

ANNOTATION AND DISCUSSION

Section 93: *If the municipalities cannot agree to the distribution of Commission assets under subsection (2) they may apply to the county court for an*
(3) *order to resolve the matter.*

(3) Where the participating municipalities cannot agree on the distribution of the assets of the commission, they shall make an application to a court of competent jurisdiction, and the court may make an order respecting the distribution of the assets.

(4) After an order has been made pursuant to subsection (3), the Minister may make an order dissolving the commission.

ANNOTATION AND DISCUSSION - SUBDIVISION

The PARC Final Report recommends several changes in the way in that the subdivision of land is regulated. In order to protect the consumer, and as a necessary corrollary to the badly needed modernization of the land titles system in the Province PARC recommended a change in the definition of subdivision. The Department agrees and proposes that in future the creation of any new lot or a lot consolidation would constitute a subdivision. This should relieve much of the difficulty experienced with the current Planning Act where the definition varied depending upon whether a municipality had adopted a subdivision by-law. This working paper, consistent with PARC's recommendation, has sought to distinguish between provincial and municipal interests, and therefore provides a provincial role in subdivision.

Section 94: *This section provides for the making of provincial subdivision regulations by the Minister and for the content of the regulations. Regulations may vary from municipality to municipality.*

Section 95: *This section defines the procedure to be followed by the Minister in making subdivision regulations.*

The Minister must give notice to each affected council of his intention to make or amend subdivision regulations. The notice must be given at least ninety days prior to the effective date in order that councils will have time to comment upon the proposed regulations. The Minister is required to place a newspaper advertisement in each area for which regulations are intended, to notify the public and provide an opportunity for comments from the public.

SUBDIVISION

Provincial Subdivision Regulations

94 (1) Within twelve months of the coming into force of this Act, the Minister shall prescribe provincial regulations for the subdivision of land.

(2) Provincial subdivision regulations shall include

(a) procedure for the approval of tentative plans by a provincial development officer;

(b) requirements of tentative plans for approval;

(c) procedure for approval of final plans;

(d) requirements of final plans; and

(e) referral of a tentative or final plan of subdivision to departments or agencies of a municipality or the Province.

(3) Provincial subdivision regulations may include:

(a) waivers from compliance with certain requirements of the regulations;

(b) fees to be charged for the processing and registration of plans of subdivision;

(c) where there is no land use by-law in effect, minimum lot sizes, minimum lot frontages and building lines; and

(d) any other matter of provincial concern.

Adoption Of Provincial Regulations

95 (1) At least ninety days before making provincial subdivision regulations, the Minister shall:

(a) give written notice of his intention to each council affected by the proposed regulation, and seek the comments of each council; and

(b) cause notice to be given to the public by advertisement in a newspaper circulating in any area affected.

ANNOTATION AND DISCUSSION

Section 96: *Where there are provincial subdivision regulations a provincial Development Officer will administer them.*

Section 97:

(1)&(2)&(3) *Either provincial subdivision regulations or a municipal subdivision by-law would be in effect in each municipality. This section enables a municipality to adopt a subdivision bylaw. A subdivision by-law must include the provisions of the provincial subdivision regulations or more stringent provisions. Subsection (3) sets out the subjects that may be dealt with in a subdivision by-law. Since municipal planning strategies may include policies with respect to subdivision, subdivision by-laws are enabled to implement the policies.*

(2) The notice referred to in clause (b) of subsection (1) shall state where the proposed regulations may be inspected, and invite written comments.

Provincial Development Officers

96 The subdivision regulations shall be administered by one or more provincial development officers.

Subdivision By-laws

97 (1) A municipality may adopt a subdivision by-law.

(2) A subdivision by-law shall include the requirements established by regulation under Section 94, but the council may vary the content of the regulation if the effect of the variation is to have a more stringent requirement.

(3) A subdivision by-law may also include provisions with respect to any or all of the following:

(a) where there is no land use by-law, areas to be reserved for public purposes;

(b) where there is no land use by-law, minimum lot frontages and building lines;

(c) where there is no land use by-law, size and shape of blocks and lots;

(d) standards and requirements regarding the construction, width, gradients, and location of streets, and the widening or modifying of existing streets, provided that no standard or requirements shall be inconsistent with any standards of the Department of Transportation which apply to the streets;

(e) standards and requirements regarding the construction and installation of water services, sanitary and storm sewers, and other services or utilities;

(f) where not dealt with in a municipal planning strategy, the provision of open space or cash in lieu of equivalent value, to a maximum of five percent of the area shown on a final plan of subdivision, for park, playground or public purposes;

ANNOTATION AND DISCUSSION

Section 96: *Subsection (4) enables a subdivision by-law to establish specifications for, and require the construction of, streets and services in a subdivision. Performance and maintenance securities are also provided for.*

(4) & (5)

(7) *A subdivision by-law may establish circumstances under which certain requirements of the by-law may be waived.*

Section 98: *Subsection (1) enables a council, where its municipal planning strategy provides, to limit the subdivision of lots from any parcel in a calendar year.*

(1)

(g) requirements regarding the certification of certain plans of subdivision by a professional engineer;

(h) any other matter provided in a municipal planning strategy.

(4) A subdivision by-law may require a subdivider before approval is endorsed on a final plan of subdivision

(i) to install water and sewer services;

(ii) to construct, lay out, grade and pave, or any of them, any proposed street in the subdivision, or in the alternative to clauses (i) and (ii);

(iii) to enter into a bond or other security satisfactory to the council to install and provide the streets, sewer, water, and other services, to the standards set out in the by-law, and to provide a bond or other security for the maintenance of the installations, for a maximum period of one year from the date of the installation.

(5) The subdivider shall provide the services required pursuant to subsection (4) only as required by the subdivision by-law, and in accordance with specifications contained therein.

(6) A subdivision by-law may prescribe a schedule of reasonable fees to be paid by the applicant for the process of review and approval of a plan of subdivision, including a fee for the filing of the final plan in the registry of deeds.

(7) Subject to subsection (2), a subdivision by-law may provide that certain procedures or requirements for approval of a plan of subdivision may be waived in the circumstances set out in the by-law.

98 (1) Where the municipal planning strategy so provides, a subdivision by-law limit the number of lots per parcel that may be created by plan of subdivision in the calendar year.

Municipal Planning Strategy

ANNOTATION AND DISCUSSION

Section 98: *Subsection (2) expands the authority of municipalities to require dedications of land or money for park playground or public purposes*

(2) *where council makes provision in a municipal planning strategy. An upper limit of 10% is established.*

Section 99: *Public notice and a hearing is required before a council may adopt a subdivision by-law. The Minister's approval is required before the by-law comes into effect.*

Section 100: *This section establishes procedures for determining the dedication of land or money to be required of a subdivider. These are similar to those in the current Planning Act except that subsection (4) provides that the subdivider may offer the council an equivalent parcel of land outside the area subdivided.*

(2) Where the municipal planning strategy so provides, a council may in the subdivision by-law require land dedication or cash in lieu for park, playground and public purposes in excess of five percent as required by clause (f) of subsection (1) of Section 97, but in no case shall the required dedication exceed ten percent of the area shown or the final plan or the cash in lieu of equivalent.

Municipal Planning Strategy

99 (1) Before adopting a subdivision by-law, the council shall comply with the same procedure as is necessary for the amendment of a land use by-law, and Sections 26 and 27 shall apply mutatis mutandis.

(2) A subdivision by-law shall not come into effect until approved by the Minister.

Open Space Dedication

100 (1) The size of an open space dedication required by a subdivision by-law shall be calculated on the basis of the area shown in the final plan of subdivision, excluding streets, roads, and the residue of land owned by the subdivider.

(2) The amount of the cash in lieu of the open space dedication shall be calculated on the assessed value of the new lots created, excluding streets, roads, and the residue of land owned by the subdivider.

(3) Any cash contributions made pursuant to the subdivision by-law shall be used by the council for the acquisition of and capital improvements to park, playground, and public open space areas.

(4) A subdivider may, in lieu of complying with subsection (1), offer to the council, and the council may accept, an land of equivalent value outside the area being subdivided, and within the boundaries of the municipality.

Municipal Development Officer

101 (1) The subdivision by-law shall provide for the appointment of a municipal development officer to administer the by-law and approve and endorse plans of subdivision.

(2) Where the municipality participates in a district planning commission, the council shall appoint a development officer in the employ of the commission to be the municipal development officer for the purposes of administration of the subdivision by-law, and for the approval and endorsement of plans of subdivision.

Sections 98, 99, 100, 101

ANNOTATION AND DISCUSSION

Sections 102 - 106 establish the procedures to be followed in the approval of a plan or subdivision. These procedures are the same whether a provincial or municipal development officer is involved. The subdivision approval process has three distinct steps. These are: (i) approval of a tentative plan, (ii) approval of a final plan, and (iii) endorsement of a final plan. The subdivision process is not completed until all of these steps are completed.

Section 102: *This section requires a development officer to reply to an application for tentative approval within thirty days of receiving a complete applicaton. If a decision cannot be made because a reply has not been received from a provincial department to which the plan was referred, the applicant will be notified of this.*

Section 103: *When a final plan has been approved, but before it has been endorsed, a subdivider may proceed to construct any required roads or services.*

Section 104: *In a comprehensive development district, the development officer may approve a plan of subdivision which complies with the development agreement but not with the subdivision by-law.*

(3) Assistant municipal development officers may be appointed to assist the municipal development officer.

Application For Approval

102 (1) In this Section and in Sections 107, 109, 110 and 111 "development officer" means a provincial development officer or a municipal development officer.

(2) An application for approval of a tentative plan of subdivision may be made to the development officer.

(3) Within thirty days of receiving a completed application for approval of a tentative plan of subdivision and the necessary information required to evaluate the application, the development officer shall either

(a) approve the tentative plan if it conforms to the subdivision regulations or by-law, and so notify the applicant; or

(b) notify the applicant in writing of all approvals received, and, where necessary, departments or agencies of the Province which have not approved the tentative plan as submitted; or

(c) notify the applicant in writing of his decisin refusing to approve the tentative plan as submitted, which decision shall contain the reasons for the refusal.

(4) Where approval of a tentative plan has been given, such approval shall lapse if no application for approval of a final plan is made by the subdivider within two years of the date of approval of the tentative plan.

Construction Before Endorsement Of Approval

103 Where a final plan has been approved, an applicant may lay out and construct streets, blocks, lots and land for public purposes, and any utilities required by the by-law, in such phases as may be agreed upon at the time of approval of the final plan.

Exception For Agreements

104 A municipal development officer may approve a final plan of subdivision in respect of a development which is the subject of an agreement pursuant to Section 51, notwithstanding that the plan does not comply with the subdivision by-law, provided that it is in accordance with the agreement.

ANNOTATION AND DISCUSSION

Section 105: *A development officer may grant minor variances of up to ten percent of the lot size and frontage requirements for one lot on a plan or subdivision subject to the conditions of this section. The development officer's decision may be appealed to council in the same manner as variance decisions made under a land use by-law.*

Section 106:

(1) *In a rural municipality a development officer shall not approve a subdivision until the Department of Transportation has approved all streets and roads within or abutting the subdivision.*

(2) & (3) *A municipal planning strategy may provide for a subdivision by-law to permit the development officer to approve private roads or streets within or abutting a subdivision. However, in a rural municipality such provision may only be included in a subdivision by-law if an agreement is made between the municipality and the Minister of Transportation. When an agreement is in effect the Department of Transportation must approve of the alignment, right-of-way, and access of the private road to a public road.*

Variance Of Standards

105 (1) Where a subdivision by-law or a land use by-law is in effect which specifies a minimum lot size and a minimum frontage requirement, and where either by-law so provides, the municipal development officer may approve a final plan of subdivision which creates one lot that does not meet the requirements provided that the reduction in the standard is not more than ten percent.

(2) A variance shall not be granted where the difficulty experienced is general to the area or where the difficulty results from the intentional or negligent conduct of the owner in relation to the property.

(3) A variance granted cannot alter a standard that has been established by the Province, or one of its departments or agencies.

(4) The granting of or the refusal to grant a variance under this Section may be appealed in like manner as a minor variance granted or refused to a land use by-law, and the provisions of Sections 66, 67 and 68 shall apply mutatis mutandis.

Public And Private Roads

106 (1) No subdivision in a municipality other than a city or a town shall be approved until the Minister of Transportation or an official of his department nominated by him for the purpose, has approved all public streets and roads shown in the subdivision, or part thereof to be approved, or on which lots in the subdivision, or part thereof to be approved, abut.

(2) Where a municipal planning strategy so provides, a subdivision by-law may provide for approval of private streets and roads shown in the subdivision, or part thereof to be approved, or on which lots in the subdivision, or part thereof to be approved, abut.

(3) The council of a municipality other than a city or a town shall not provide for private streets or roads in its subdivision by-law unless there is an agreement in force between the council and the Minister of Transportation in which the council undertakes to provide for the construction necessary to make the road suitable for acquisition by the Department of Transportation.

ANNOTATION AND DISCUSSION

Section 107: *No subdivision of land can occur until a plan endorsed by a development officer is filed in the Registry of Deeds. A development officer is required to show on the copy to be filed what approvals and refusals have been made with respect to a plan of subdivision.*

Section 109:

(1) & (2) *Before a plan of subdivision takes effect it must be endorsed by the development officer and filed in the Registry of Deeds. Until the subdivision process is completed by filing in the Registry of Deeds no instrument relating to parcels shown on the plan of subdivision, for example a deed conveying a lot, shall have effect.*

(3) *Subsection (3) sets out divisions of real property which are to be exempted from the subdivision requirements of the proposed Act.*

(4) Where there is an agreement in force purusant to subsection (3), no plan of subdivision shall be approved unless the Minister of Transportation or an official of his Department nominated by him for the purpose, has approved the alignment and right-of-way of the private road, and the access of the private road to a public road.

Approval And Endorsement Of Final Plan

107 (1) No plan of subdivision shall be filed in the office of any Registrar of Deeds until the plan has been approved by a development officer, and no Registrar of Deeds shall accept or file any plan of subdivision unless a certificate of such approval is endorsed thereon by the development officer.

(2) Subject to Section 102, a development officer shall endorse his approval on a final plan of subdivision within thirty days after being requested to do so by the applicant, unless the applicant has failed to comply with the subdivision regulations or subdivision by-law.

(3) When endorsing the final plan of subdivision the development officer shall indicate on the plan what other approvals have been granted or refused by other departments or agencies of the Province, pursuant to any other enactment.

Notice To Council And Director

108 When a provincial development officer endorses his approval on a final plan of subdivision, he shall give notice of the approval to the council of the municipality in which the land subject to the plan is located, and to the Director, within five days of the endorsement.

Registration Necessary To Effect Subdivision

109 (1) No subdivision occurs until the final plan is endorsed by the development officer and is filed in the registry of deeds for the registration district in which the land is situated.

(2) No deed, mortgage, lease or other instrument which results in the subdivision of land shall have effect until subsection (1) has been complied with.

(3) A devise of real property by a testamentary instrument or an acquisition of real property by the Province for the purposes of a public highway by any means whatsoever, resulting in the division of real property shall not be a subdivision within the meaning of the Act, the former Planning Act, the former Town Planning Act, or any local Act or any regulation or by-law made pursuant to any of the said Acts.

Sections 106, 107, 108, 109

ANNOTATION AND DISCUSSION

Section 110: *This section provides two procedures for amending a plan of subdivision. Subsection (2) provides that a plan may be amended by following the same procedure required to have the original plan of subdivision approved. Subsections (3) - (5) enable a council to amend a plan of subdivision. Comments are invited with respect to whether this second procedure should be maintained in a new Act.*

An amendment to a plan of subdivision shall be filed in the Registry of Deeds. Amending a plan of subdivision will have no effect upon land ownership.

Amendment Of Final Plan

110 (1) Where a final plan of subdivision has had approval endorsed thereon by the development officer, it may be amended or repealed in whole or in part in accordance with this Section.

(2) An application to amend or repeal may be made by the owner and the practice and procedure to obtain an amendment and on amending a plan of subdivision shall be the same as the practice and procedure for an original application for approval of a plan of subdivision as set out in the provincial subdivision regulations or subdivision by-law of the municipality, except as provided in this Section.

(3) A council which has a subdivision by-law may amend or repeal a plan of subdivision on its own motion but shall not do so without first giving thirty days notice in writing of its intention and of a time and place at which interested persons will be heard to the owner of the property either by personal service or by mailing the same by registered mail, postage prepaid, addressed to him at the last address known to the council or if none is known then at the address shown on the assessment roll if one is shown there; and by inserting such at least once a week for two successive weeks in a newspaper circulating in the area affected, the first of such notices to be published at least twenty-one clear days before the date fixed for the hearing.

(4) Except as provided in subsection (3), no amendment of a plan of subdivision shall be made without the consent in writing of the owner or owners of the land the subdivision of which is being amended.

(5) An amendment of a plan of subdivision shall not affect the ownership of the land.

(6) An amendment to a plan of subdivision shall be approved and filed in the office of the Registrar of Deeds in the same manner as required for an original plan of subdivision, notwithstanding that the original plan was not approved and filed under this Act, and any original plan which is subject to amendment by this Section shall also be filed.

(7) When a deed, mortgage, lease or other instrument has been made which resulted in the subdivision of land in accordance with a plan of subdivision duly approved and filed in the office of the Registrar of Deeds, the amendment of that plan shall not

ANNOTATION AND DISCUSSION

Section 111: *This section provides for an appeal by the land owner from a development officer's refusal to approve a plan of subdivision. Subsection (2) allows an appeal within 15 days of a development officer notifying the applicant of the refusal in writing. No appeal is provided for the approval of a plan of subdivision, which is consistent with the status of other approvals under the Act. No appeal is provided to the Board for the issuance of development permits, for example.*

restrict the right to the owner, mortgagee, or lessee or other holder to execute other deeds, mortgages, leases or instruments in which property is described as in the deed, mortgage, lease or other instrument first herein mentioned.

Appeal Of Refusal

111 (1) Where a development officer refuses to approve a plan of subdivision, the applicant may appeal the decision to the Board.

(2) An appeal pursuant to subsection (1) shall be taken within fifteen days of the date of the written decision of the development officer.

(3) In considering an appeal pursuant to this Section, the Board shall determine whether the proposed plan of subdivision complies with the subdivision regulations or subdivision by-law, as the case may be.

(4) The Board may:

(a) confirm the decision of the development officer; or

(b) direct the development officer to approve the plan or subdivision.

ANNOTATION AND DISCUSSION - TRANSITIONAL PROVISIONS

Section 113: Several areas of the Province still use planning documents prepared under the Town Planning Act. This section provides for these controls to be maintained for two years. This two-year extension is intended to provide time for the municipalities involved to prepare municipal planning strategies and land use by-laws if they wish to continue to regulate land use.

Section 115: Subdivision regulations prescribed under the current Planning Act will continue in force until they are either (i) replaced by new regulations or (ii) the municipality adopts a subdivision by-law under the new legislation.

Section 116: If a by-law is adopted it will incorporate the regulations that exist at that time.In (i) where no by-law exists and the Minister prescribes new provincial regulations, he may retain aspects of existing regulations which are not covered in the new provincial regulations.

TRANSITIONAL PROVISIONS

Regional Plan Continued

112 The Halifax-Dartmouth Metropolitan Regional Development Plan and Regulations, as amended, made pursuant to the former Planning Act, continue in force, and Part II of the former Planning Act applies to them.

Zoning By-law And Official Town Plans

113 (1) A zoning by-law or an official town plan passed under any former Town Planning Act, which by-law or plan was in force immediately before the coming into force of this Act, shall continue to be in force for a period of two years.

(2) A zoning by-law or official town plan to which subsection (1) applies may be amended, revised or repealed in the same manner as a land use by-law or municipal planning strategy may be amended, revised or repealed.

Municipal Development Plans And Zoning By-laws

114 A municipal development plan and zoning by-law passed under the former Planning Act are deemed to be a municipal planning strategy and land use by-law adopted under this Act, and may only be amended, revised or repealed in accordance with this Act.

Subdivision Regulations

115 (1) Subdivision regulations made by the Minister pursuant to the former Planning Act or any former Town Planning Act shall continue in force until the Minister prescribes regulations pursuant to this Act.

(2) When the Minister prescribes regulations pursuant to this Act, he shall take into account subdivision regulations existing at the date of the prescription, insofar as they do not conflict with the regulations made pursuant to this Act.

Subdivision By-laws

116 (1) A subdivision by-law passed under the former Planning Act continues in force until a municipality adopts a subdivision by-law pursuant to this Act, and it may be amended in accordance with this Act.

(2) A council may adopt a subdivision by-law pursuant to this Act if the Minister has not prescribed subdivision regulations, and any such by-law shall adopt any existing subdivision regulations made pursuant to the former Planning Act.

ANNOTATION AND DISCUSSION - GENERAL

Section 117: This section is similar to and replaces the injurious affect provisions in the regional and municipal planning sections of the current Planning Act.

Section 118: This section makes municipal planning documents binding on the Province unless compliance within them jeopardizes a statutory provincial interest.

Sections 119 - 121 make provisions for enforcement and penalties. Actions under the Act may be brought to the Trial Division to the Supreme Court, by the clerk for the municipality or by the Director for the Province, with the approval of council or the Minister respectively. The provisions of these three sections are the same as Sections 57, 58, and 59 in the current Planning Act except that in Section 121 fines for a conviction under the Act have been increased to a maximum of one thousand dollars and where the offence continues to two hundred and fifty dollars for each day. Under the current Act these fines were a maximum of one hundred dollars and twenty-five dollars respectively.

GENERAL

No Injurious Affection

117 Property is deemed not injuriously affected by anything done or continued pursuant to this Act, except a project carried out pursuant to an official town plan, a municipal development plan, a municipal planning strategy, a land use by-law, or a provincial land use policy or land use regulation.

Binding On Crown

118 A municipal planning strategy, land use by-law or subdivision by-law is binding upon Her Majesty in right of the Province, unless compliance therewith jeopardizes an interest of the Province established by an enactment.

Remedies For Contravention

119 (1) In the event of any contravention of or failure to comply with this Act or any by-law or regulations made under this Act and in addition to or in lieu of any other proceedings authorized by law,

(a) the clerk in the name of the municipality when authorized by the council or by a standing committee of the council; or

(b) the Director in the name of the Crown when authorized by the Minister,

may bring an action or other legal proceedings in respect thereof in the Trial Division of the Supreme Court or in a County Court for any or all of the remedies provided by this Section or otherwise provided by law.

(2) A judge of the Trial Division of the Supreme Court or a judge of the County Court may hear and determine the same at any time, in court or in chambers, and in addition to any other remedy or relief may:

(a) make orders restraining the continuance or repetition of any such contravention or failure of the new or further contravention or failure in respect of the same property.

(b) make orders directing the removal or destruction of any building or structure or part thereof which is in contravention of or fails to comply with this Act, or a by-law or regulation made under this Act, and authorizing the council or a standing committee thereof or an official of the municipality, or

ANNOTATION AND DISCUSSION

the Director, if such order is not complied with, to enter upon the land and premises with necessary workers and equipment and to remove and destroy the building or structure or part thereof at the expense of the owner; and

(c) make such further order as to the recovery of the expense of any such removal and destruction and for the enforcement of this Act, or by-law or regulation, and as to costs, as the court or judge deems proper;

and any such order may be interlocutory, interim or final.

(3) If, after the action or proceeding has been commenced, it should appear that

(a) the contravention or failure to comply that was the subject of the action or proceeding may have been done or committed by a person other than the defendant; or

(b) the title to the property or part thereof or any interest therein, vested at the commencement of the action or proceedings, or has subsequently become vested in a person or persons other than the defendant; or

(c) there has been a fresh contravention or failure by the same person or by another person with respect to the same property;

it shall not be necessary to bring another action or proceeding but the judge may order or permit parties to be added and pleadings to be amended from time to time before final judgement so as to include all parties and all contraventions and failures to comply with respect to the same property, and the judge shall hear, deal with and determine the whole matter of such contraventions and failures to comply notwithstanding that they may be contraventions of or failures to comply with different Sections of this Act or of the by-law or regulations.

ANNOTATION AND DISCUSSION

Section 120: *In Section 120 conditions are established for entry to property where this is necessary for the administration of a land use by-law or provincial land use regulations.*

(4) If the owner of any building or structure with respect to which any such contravention or failure to comply is taking place or has taken place cannot be found by the clerk, he or the Director may post or cause to be posted a notice of such contravention of failure to comply and of the intention to take action or proceedings in respect thereof upon the building or structure; and after the expiration of ten days from the first day of such posting, an aciton or proceeding in respect thereof may be brought or taken ex parte; the name of the last person appearing in the records in the office of the registrar of deeds for the registration distirct in which the lands are situate, as the owner thereof, may be used as the defendant and this name shall be proved by the affidavit of a barrister and solicitor of the Supreme Court of Nova Scotia which shall be filed in the records of the court at the time of the commencement of the action or proceeding.

Access To Property

120 (1) The Council or the Minister, by any duly authorized officers or servant, shall have the right to enter at all reasonable times into or upon any property within the municipality for the purposes of an inspection necessary in correction with the administration of an land use by-law, subdivision by-law or provincial land use regulation, as the case may be.

(2) If admission be refused, any magistrate, upon complaint on oath of an officer of the council or that of the Minister, made after two clear days of notice in writing of intention to make the complaint has been given to the person having control of the property, may by order require such person to admit such officers or servants into or upon the property during such reasonable hours as he shall think fit.

(3) If no person having such control can be found, the magistrate on proof of the facts, may by order authorize the council and its officers or servants to enter into or upon the property for the purposes hereinbefore mentioned during such reasonable hours as he shall think fit.

(4) Any order made by a magistrate shall continue in force until the purpose for which admission was required shall have been fulfilled.

Offences And Penalties

121 (1) A person who

(a) violates any provision of this Act; or

ANNOTATION AND DISCUSSION

(b) violates any provision of an order, regulation, by-law or plan in force pursuant to this Act: or

(c) fails to do any act or thing required to be done in by an order, regulation, by-law or plan in force pursuant to this Act; or

(d) suffers or permits any act or thing to be done in violation of any provision of an order, regulation, by-law plan, strategy, or land use policy in force pursuant to this Act;

(e) obstructs or hinders any person in the performance of his duties under this Act or under any order, regulation, by-law or plan in force pursuant to this Act;

is guilty of an offence and liable on summary conviction to a fine not exceeding one thousand dollars and in default of payment to imprisonment for a term not exceeding two months and in the case of a continuing offence to a further fine not exceeding two hundred and fifty dollars for each day during which the offence continues and in default of payment to imprisonment for a term not exceeding ten days.

(2) No prosecution for an offence under this Act shall be commenced after two years from the date on which the offence was committed.

122 In the event of conflict between the provisions of this and any other Act, the provisions of this Act shall govern. **Act To Prevail**